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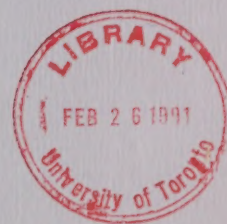
VOLUME: 291

DATE: Wednesday, February 13, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

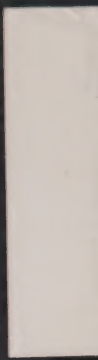


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ENVIRONMENTAL ASSESSMENT BOARD

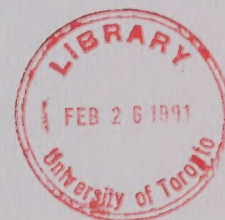
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FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the offices of the Ontario
Highway Transport Commission, Britannica
Building, 151 Bloor Street West, 10th Floor,
Toronto, Ontario, on Wednesday, February 13,
1991, commencing at 9:00 a.m.

VOLUME 291

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>ROBERT MULLER,</u> <u>PETER MORRISON</u> , Resumed	51876
Continued Cross-Examination by Mr. Freidin	51876
Re-direct Examination by Ms. Swenarchuk	51957
Submissions re reply evidence and argument	51972

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1710	Answer to interrogatory No. 7 asked by the Canadian Association of Single Industry Towns.	51935

1 ---Upon commencing at 9:05 a.m.

2 MADAM CHAIR: Good morning. Please be
3 seated.

4 ROBERT MULLER,
5 PETER MORRISON, Resumed

6 CONTINUED CROSS-EXAMINATION BY MR. FREIDIN:

7 Q. Dr. Morrison, could you have before
8 you Exhibit 1696. We were dealing with overhead 18
9 which is the herbicide information for 1983 to '87
10 where we discussed the increase.

11 DR. MORRISON: A. Okay.

12 Q. Just before I leave the area of your
13 evidence dealing with herbicides, could you refer to
14 the next overhead in that exhibit which is overhead 19.

15 A. Okay, I have it.

16 Q. Where you have the indication or the
17 recording of a comparison between plan versus actual
18 and you made the point, as I understood your evidence,
19 that the relative amounts differed and, again, I was
20 not clear as to what the significance, if any, was of
21 that observation?

22 A. Okay. The significance of that
23 observation was that because the relative deviations
24 from the planned amounts differed amongst the various
25 activities which have been identified there that there

1 seemed to be some problem in terms of coordination of
2 activities.

3 Q. There seemed to be. Yes?

4 A. That was the inference I drew from
5 that figure.

6 Q. All right. So you were trying to
7 lead the impression that there was somehow a lack of
8 coordination by the Industry and the Ministry in
9 relation to the four activities referred to?

10 Is that the suggestion that you were
11 trying to leave the Board with?

12 A. Not necessarily coordination between
13 the Ministry and the Industry, but coordination among
14 the various timber management activities identified
15 there.

16 Q. Well, Dr. Morrison, is it not -- I
17 mean, you come to these conclusions based on looking at
18 a graph like that.

19 Isn't it equally possible that the amount
20 of tending was up in that particular year because there
21 was tending of plantations which had been put in maybe
22 two or three years early -- or two years earlier and
23 they were trying to spray herbicides to protect the
24 seedlings from competition; they wanted to make sure
25 those seedlings survive?

1 Isn't that an equally plausible
2 explanation for that graph which would not -- well, is
3 that not an equally plausible explanation for the
4 graph?

5 A. Well, then I guess I would have to
6 ask the question of where the planned levels came from.
7 And if the planned levels did not take into account
8 those kinds of considerations, then I would suggest
9 that there is a problem in the planning and
10 coordination of the activities.

11 Q. Dr. Morrison, do you know enough
12 about forestry to realize that some times you plan to
13 do things and that circumstances may be such that what
14 happens on the site doesn't require to you do
15 something?

16 A. Of course.

17 Q. Isn't that a possible explanation for
18 the relative amounts being the way they are shown here?

19 A. Well, I would certainly agree with
20 you to the extent that the deviation from the plan, the
21 absolute -- the fact that there was a deviation from
22 the plan would reflect that, but what I'm concerned
23 about is not only the deviation from the plan which, as
24 I understand was explained in that five-year review,
25 was due to economic forces, but I am also concerned

1 about the relative deviation among the various
2 activities.

3 Q. The relative ones being the fact that
4 you got more tending than you have harvest and
5 regeneration?

6 A. That's correct.

7 Q. And you had more site preparation?

8 A. That's right, in a relative sense.

9 Q. Could there be NSR lands being
10 sprayed? Could that be part of the reason for the
11 tending being up?

12 A. I presumed that NSR lands were being
13 sprayed during that time period.

14 Q. I am just concerned that you seem to
15 be ready to draw adverse inferences from graphs like
16 this, but are not willing to suggest in your evidence
17 that there may be very good reasons, sound
18 silvicultural reasons for the differences.

19 Is there some reason that you are always
20 focusing on the adverse inferences from these things?

21 A. Well, I guess I'm not sure I would
22 agree with that generalization. I think that
23 generalization ought to be supported, as I presume you
24 will do in your questioning.

25 My concern with this particular graph was

1 that -- was the apparent discrepancy between the
2 planning and what was being carried out in practice.
3 If planning had not been done, if it was not planned to
4 spray NSR lands, then I suspect that there is a
5 problem.

6 Q. Thank you, Dr. Morrison. Dr.
7 Morrison, in describing the three types of decisions
8 which need to be made regarding harvest, you said that
9 the second decision was harvest method?

10 A. Correct.

11 Q. You said that in the document that
12 you reviewed there was no incorporation of the value of
13 non-timber values.

14 When you gave that evidence, were you
15 speaking of value in the terms of being valued
16 economically?

17 A. That would be correct.

18 Q. You weren't suggesting that the
19 documents that you reviewed did not indicate -- well, I
20 assume that the documents that you did look at made it
21 quite clear that non-timber values are indeed
22 considered in making harvesting decisions, although
23 there may have been an absence of it, consideration of
24 those from an economic point of view?

25 A. My understanding of the way that the

1 harvesting decision is made with respect to the
2 harvesting method is that some non-timber values may be
3 included and may modify the choice of harvesting method
4 under some circumstances, but my understanding is that
5 they are not systematically incorporated nor are they
6 incorporated in an economic sense in a way to provide a
7 consistent and systematic analysis of the appropriate
8 harvesting method.

9 Q. Okay, thank you. Now, there is just
10 one matter I want to sort of clear up and I think we
11 can do this fairly quickly.

12 Madam Chair made the comment during your
13 evidence -- and, Dr. Muller, you were involved in this
14 exchange. Madam Chair, you indicated that if you were
15 taking out wood you aren't providing habitat, I think
16 was the question that you posed as I have it.

17 Dr. Muller, you said, if you don't cut it
18 you get an additional year of wildlife habitat.

19 Now, Dr. Morrison, Dr. Muller, can we
20 agree that habitat is created by cutting, that you can
21 provide early successional habitat and sometimes that's
22 required.

23 DR. MULLER: A. I think I mentioned in
24 my comments at some point that cutting did create
25 certain types of habitat. Presumably it also involves

1 a loss of old growth habitat.

2 Q. sure.

3 A. So you are changing the habitat
4 structures.

5 Q. All right, thank you.

6 Dr. Morrison, are you able, based on your
7 background, to agree with my suggestion that sometimes
8 the kind of habitat which is created by harvesting in
9 fact is a desirable kind of habitat to have, depending
10 on what the other vegetation is in the area?

11 DR. MORRISON: A. Well, the habitat
12 that's created as a result of harvesting may be a
13 desirable habitat for some species, but you obviously
14 need to consider other factors such as the mix of that
15 particular area with other areas.

16 Q. All right. When you prepared your
17 witness statement and did your case study, when you did
18 your pluses and minuses for wildlife and that sort
19 thing, at the bottom--

20 DR. MULLER: A. Yes.

21 Q. --was that based on an assumption
22 that cut-over does not provide habitat - page 192,
23 Table 2 - or did that sort of detail perhaps not even
24 enter into the equation?

25 A. Remembering that I am not a wildlife

1 specialist, the thought process I went through was for
2 the volume of wildlife some harvesting increases early
3 growth - early successional stages, I think is what you
4 said - and therefore would increase the total amount of
5 fodder available for wildlife. I was thinking
6 particularly of game animals, like deer and moose.

7 I was thinking that that would probably
8 be higher under a modified cut than under a clearcut
9 and that's why I put the double pluses for the modified
10 cut and one plus for alternative C and D.

11 You will notice both of them refer to
12 higher wildlife volumes than alternative A. I was
13 going through similar kinds of considerations in
14 assessing wildlife species diversity and, again,
15 remembering this is simply an impression from the
16 literature.

17 My idea was that the modified cutting
18 techniques, as I understood them, provided a more
19 diverse set of habitats and, therefore, would support a
20 wider diversity of species than the clearcut.

21 Q. Okay. That's fine, thank you.

22 Dr. Muller, Dr. Muller, my last question
23 under my miscellaneous tab here. During the discussion
24 of community stability you made the comment that if
25 expansion of non-timber occurs at the expense of timber

1 production that it should be possible to compensate
2 those harmed by that change.

3 Assuming there is all kinds of unemployed
4 people in northern Ontario now, if these -- all right.
5 If these other jobs aren't being created in the present
6 environment in the north, what makes you think that it
7 is going to happen without the forestry industry or
8 with a reduced forestry industry?

9 A. I don't think that I implied and I
10 did not mean to imply that the compensation would
11 necessarily take the form of additional jobs in the
12 precise localities that people are resident in now.

13 I think it's fair to summarize the
14 position of many policy-oriented economists to say that
15 when an allocative improvement can occur, then you have
16 some gains. You should focus your assistance on
17 generalized programs to promote mobility of labour, to
18 make it easier for people to move and less costly for
19 them to move, to provide job training opportunities and
20 so forth.

21 In other words, it's not clear to me that
22 the best expenditure of your money would be to focus on
23 this particular change. It might be best to worry
24 about reducing unemployment in northern Ontario
25 generally regardless of whether it was caused by a

1 reduction in the forest industry or some other cause.

2 Q. When you talk about mobility of
3 labour and that you wouldn't necessarily place these
4 jobs in the same -- exactly the same locale, do you
5 have any sense as to whether in fact the compensation
6 of those harmed would require that labour to be so
7 mobile they would have to leave the north?

8 A. Well, once again, drawing your
9 attention to the fact that we are dealing with
10 incremental changes, small changes - and you, for
11 example, pointed out that you have an estimate that
12 changing composition for newsprint would require only a
13 reduction of one per cent in the volume of roundwood
14 cut - what I am trying point out is that I want you to
15 recall that we are talking about changes in the volume
16 that may not be very large.

17 I would say as an economist that most
18 economists would agree that it is appropriate to
19 provide mobility between regions and if --

20 Q. By regions, what do you mean by
21 regions in that context?

22 A. In this context, in this specific
23 context that we are talking about I would mean between
24 communities in the north and between communities in the
25 north and communities in the south.

1 Q. Okay. And if you wanted to increase
2 or wanted to maintain that labour that may be displaced
3 by a reduced forestry industry in the north -- okay?

4 A. Yes.

5 Q. So they wouldn't have to move to the
6 south.

7 Do you have any view as to whether you
8 would have to subsidize the new industry to get them to
9 the north, and if that's the case what's the gain in
10 economic terms?

11 A. Well, the question is whether or not
12 you would be subsidizing a new industry in the sense of
13 a newly -- a new private enterprise system or whether
14 you would be, for example, increasing employment in
15 health and educational sectors or, as some of you are
16 aware, decentralizing the provincial government so that
17 some of the civil service jobs are available in the
18 north.

19 I'm not in a position to say much about
20 the subsidy of additional industries to come into the
21 north.

22 Q. Okay, thank you.

23 Dr. Morrison, questions for you regarding
24 your evidence on the adequacy of the environmental
25 assessment document. I think you indicated, sir, that

1 you read a number of panels 'witness statements of the
2 Ministry of Natural Resources?

3 DR. MORRISON: A. That's correct.

4 Q. Did you read Panel No. 3?

5 A. No, I did not.

6 Q. All right. That was the evidence of
7 Dr. Osborn on sustained yield. You didn't read that?

8 A. No.

9 Q. And I think it was Dr. Muller - and
10 if it was you, Dr. Morrison, correct me - that made the
11 comment that you looked at the documents and the
12 alternatives to the undertaking were looked at in the
13 entire area, that the -- in contrast, the alternative
14 methods were applicable at the stand level and that the
15 undertaking itself was conducted at the forest
16 management unit level?

17 A. I made that comment in my testimony.

18 Q. All right. Can I assume, Dr.
19 Morrison, that you have no expertise to comment on
20 whether that approach is absolutely appropriate in the
21 context of -- from a legal perspective for class
22 environmental assessment?

23 A. I'm not trained as a lawyer.

24 Q. Okay. So if it is proper from a
25 legal point of view, you couldn't comment on one way or

1 the other?

2 A. That's correct. I could comment on
3 it from an analytical point of view, but that's not
4 what you are asking.

5 Q. That wasn't my question. Thank you.

6 You stated -- I think we got this this
7 morning. Oh, this is Tuesday's, Volume 287.

8 Do you have that one with you?

9 A. No, I don't.

10 Q. All right. I will just read to you
11 what you said. Volume 287 at page 51,365, you made the
12 comment:

13 "The environmental assessment does not
14 include any quantitative evaluation of
15 alternatives of the kind that would be
16 possible with an economic analysis. It
17 disregards basic economic principles in
18 evaluating the net benefits. It is
19 inconsistent in its coverage of the
20 Industry."

21 You go on, you say:

22 "To my surprise, and a couple of
23 rereadings to confirm this fact, in the
24 Class EA document no conclusion was
25 reached with respect to the evaluation of

1 advantages and disadvantages."

2 You went on and said:

3 "I might mention that that's not the case
4 with the Panel 17 evidence, but it
5 certainly was with the document. "

6 If the environmental assessment, as a
7 matter of law, is imposed not only of the environmental
8 assessment document but the evidence which is before
9 the Board, I guess we can agree based on your evidence
10 that there was a conclusion reached with respect to the
11 evaluation of advantages and disadvantages in the EA as
12 a whole?

13 A. Well, we can agree I think that the
14 Ministry has put forward its conclusion in Panel 17.

15 Q. Right. Would you refer to page 29 of
16 the environmental assessments document, Exhibit No. 4.

17 Would you agree that on page 29 in the
18 very first paragraph there is an indication that the
19 alternative which was chosen, the conclusion which was
20 reached in relation to the alternative which had the
21 most advantages was, in fact, identified as being the
22 undertaking of timber management?

23 A. I would agree, but I would also point
24 out that that conclusion was not present in the section
25 dealing with the evaluation of the advantages and

1 disadvantages.

2 Q. Thank you. Just a few more moments
3 on this topic. Dr. Muller, you stated in the same
4 volume, 287, at page 51,375, starting at line 23:

5 "The problem that I see is that if we try
6 to interpret the class assessment as an
7 attempt to wisely allocate the forest
8 resources, then it seems fairly clear
9 that we should attempt to allocate them
10 wisely at the forest management level;
11 that is, we should consider each
12 chunk of the forest and we should be
13 aware of the fact that the appropriate
14 alternatives -- the appropriate
15 alternative uses of land may easily vary
16 depending on whether they are in the
17 north or the south..." and you went on.

18 Now, when you used the phrase
19 "alternative uses of land", I take it you were using it
20 in the same context as you described it yesterday?

21 DR. MULLER: A. That's correct.

22 Q. And you said:

23 "If we try to interpret the Class EA as
24 an attempt to wisely allocate forest
25 resources..."

1 Could you turn to page 8 of the
2 environmental assessment document which is Exhibit 4.
3 Do you have that?

4 A. The page starts Section 2, Purpose of
5 the Undertaking?

6 Q. That's right. And the purpose of the
7 undertaking is defined as the purpose -- pardon me:

8 " To provide a continuous and predictable
9 supply of wood for Ontario's forest
10 products industry."

11 Can we at least agree, sir, that the
12 purpose as stated in the environment assessment
13 document is different than the purpose that you refer
14 to in your evidence?

15 A. The purpose as stated there is not
16 the purpose that I stated in my evidence, yes.

17 Q. When I looked at Exhibit 1695C, which
18 is where you set out the problem, the objective and the
19 interpretation--

20 A. Yes.

21 Q. --when you said objective, were you
22 using that sort of in the same context as one would use
23 the word purpose?

24 A. Wait one moment while I refer to it.

25 Fair enough, yes.

1 Q. All right. Could you tell me, sir,
2 where or from where did you derive or conclude that the
3 purpose of the environmental assessment would be as you
4 stated on Exhibit 1695C:

5 "...the betterment of the people of the
6 Ontario by wise management of the forest
7 environment."

8 A. I drew it from the Environmental
9 Assessment Act.

10 Q. From the Purpose section of the
11 Environmental Assessement Act? I think so.

12 A. I believe so, yes.

13 Q. Section 2. If your logic was
14 correct, Dr. Morrison, would you agree, sir, that every
15 environmental assessment which was ever filed in this
16 province would have as the statement of purpose the
17 statement of purpose as you have got it in 1695C?

18 DR. MORRISON: A. I presume you are
19 directing that to Dr. Muller.

20 Q. Dr. Muller, I am sorry.

21 DR. MULLER: A. That would probably be a
22 good idea, yes.

23 Q. All right. Would it surprise you,
24 sir, if I told you that that was not the statement of
25 purpose in environmental assessments, that the purposes

1 of environmental assessments which have been filed
2 since 1975 in fact as varied as the environmental
3 assessments themselves?

4 A. That would not surprise me.

5 Q. All right. Dr. -- I am not sure
6 which one of you said this. It was Dr. Muller.

7 Dr. Muller, you stated in the same
8 volume, Volume 278 at page 51,375, beginning at line
9 21 --

10 MS. SWENARCHUK: Excuse me. Would you
11 give me that again, please?

12 MR. FREIDIN: 51,375. Actually, I will
13 starting reading from line 19. You state:

14 "The difficulty -- the thing that
15 bothers me as an economist about the way
16 in which the class assessment document is
17 written is that it's treating the whole
18 thing as one gigantic project, as if you
19 could select one specific method of
20 silviculture for the whole area."

21 What did you mean by "one specific method
22 of silviculture for the whole area"?

23 DR. MULLER: A. What I meant was that it
24 seemed to me that the document read as if you could
25 select in advance the method of silviculture anywhere

1 in the province without examining -- without examining,
2 without fully examining the alternatives at the
3 individual FMU level.

4 The comment was made in the context of my
5 concern that this document did not proceed as I as an
6 economist would recommend a class assessment
7 proceeding.

8 Q. Now, when you talk about -- I'm not
9 sure whether you said silviculture method. Did you?

10 A. I think that's what I said.

11 Q. Are you talking about clearcut versus
12 selection cut versus shelterwood, or are you talking
13 about different methods of clearcut, silviculture
14 systems such as modified harvest like strip cuts, block
15 cuts, open clearcuts, seed tree cuts?

16 Which one of those --

17 A. I had in mind the kinds of
18 alternatives I later considered in the case study.

19 Q. Which are?

20 A. The main object alternatives were
21 modified clearcutting, plus enhanced natural
22 regeneration -- sorry. Modified cutting, plus enhanced
23 natural regeneration on the one hand, and large area
24 clearcutting with artificial regeneration on the other.

25 Q. All right. So was it your reading of

1 the documents that there was no discretion given to
2 foresters to choose from amongst all those various
3 alternatives?

4 Let me put it to you this way. I suggest
5 to you the evidence is that foresters can and do select
6 harvest methods within the clearcut silviculture system
7 that they will sometimes decide to strip cut, they will
8 sometimes -- there are block cuts out there, there are
9 large area clearcuts as described with planting. So
10 that they are all used.

11 You weren't suggesting that they weren't
12 all being used at the present time; were you?

13 A. No, I was suggesting that it was
14 important that these choices be evaluated in the
15 context of maximizing the net present value of the
16 resource.

17 Q. This is the the last question on this
18 EA review. Dr. Muller, you stated at page 51,378,
19 lines 12 to 17 as follows:

20 "We also made the point in the
21 document..." I guess that's your
22 document,

23 "...that we don't think that the class
24 environmental assessment gives sufficient
25 weight to the effect of timber management

1 on non-timber activities."

2 The transcript reads "and non-timber",
3 but I think you meant on non-timber activities.

4 Stopping there. You in your evidence
5 indicated you reviewed Panel 10 and you reviewed Panel
6 11 of Ministry's case, those dealing with harvest and
7 renewal.

8 A. I indicated, I believe, that I
9 quickly reviewed them looking for discussion of
10 economic analysis.

11 Q. Right. So when you say that:
12 "We don't think that the Class EA gives
13 sufficient weight to the effect of timber
14 management on non-timber activities",
15 I take it you were limiting that comment
16 to a consideration of non-timber in the sort economic
17 kind of sense that you've described in your evidence?

18 A. That would be fair enough. That was
19 my evidence.

20 Q. You weren't suggesting that those
21 were -- non-timber values were not considered?

22 A. No, I think there is lots of comment
23 about non-timber values.

24 Q. Okay, thank you.

25 Dr. Muller, you stated in Volume 287 at

1 page 51,367 that neither you or Dr. Morrison believe
2 the alternatives that we face - and I think you are
3 talking about adoption of Forests for Tomorrow's terms
4 and conditions - involve complete elimination of the
5 forestry industry?

6 A. That's certainly my opinion, yes.

7 Q. Or maintenance of its current level
8 of operation? I read that --

9 A. You had better read it to me again.

10 Q. Okay. I better get the transcript.
11 You state at 51,367, line 2:

12 "Now, I want to make it very clear that
13 neither Dr. Morrison nor myself really
14 think that the alternatives that we face
15 involve complete elimination of the
16 forest industry or the maintenance of its
17 current level of operation."

18 The part that concerned me was the second
19 part because, as it is recorded here, it says that
20 neither you nor Dr. Morrison really think that the
21 alternatives that we face will involve the maintenance
22 of the current level of operation of the forest
23 industry.

24 A. I don't think the words that you read
25 fairly represent what Dr. Morrison and I think. They

1 certainly don't fairly represent what I think.

2 Q. What is the view -- what is your view
3 and Dr. Morrison's view then on whether the
4 alternatives that we face -- what do they mean in terms
5 of the maintenance of the current level of operations
6 then?

7 MR. COSMAN: Madam Chair, just before the
8 witnesses answer that, we had evidence that these
9 witnesses didn't do any an economic study of what the
10 impact of the implementation of the terms and
11 conditions of Forests for Tomorrow's are.

12 So I don't know how they can even answer
13 it one way or the other.

14 MR. FREIDIN: Well, I want their view,
15 and the amount of weight that we give it will maybe
16 depend on what research they have done.

17 They have made comments on this and I am
18 going to refer to other comments in their witness
19 statements which relate to whether we are going to end
20 up with a reduction in the size of this industry as a
21 result of what they are proposing or not, and I think
22 that's an important question for the Board.

23 MADAM CHAIR: Well, the evidence we have
24 from the witnesses so far is that is Forests for
25 Tomorrow's proposals were to go into effect they would

1 expect that there would be a small change in how the
2 Industry operates or what the impact would be on the
3 community. That's the evidence we have.

4 You want to ask them, Mr. Freidin, how
5 small those changes will be on how the Industry
6 operates?

7 MR. FREIDIN: Yes. Without --

8 MADAM CHAIR: Well, I don't think we can
9 get any detail from these witnesses on that--

10 MR. FREIDIN: All right. Let me just
11 put it this way then.

12 MADAM CHAIR: --subject at all.

13 MR. FREIDIN: Let me just sort of cut all
14 through this.

15 Q. You said that we were talking
16 about -- I was leading up to the comment of the
17 evidence that they did give.

18 "We are talking about relatively small
19 changes in the harvest of wood..." is
20 what you said in your evidence, Dr. Muller.

21 DR. MULLER: A. Okay.

22 Q. And I take it -- my question is: Is
23 that what you would expect from implementation of
24 Forests for Tomorrow's terms and conditions?

25 A. I'm sorry, can I just say that I have

1 now recalled a little bit more fully the context in
2 which these remarks were made.

3 Q. Sure.

4 A. I believe they were made in the
5 context of statements that over time, let's say over
6 the next 20 years or so or more, the level of wood
7 harvested -- the volume of wood harvested in Ontario is
8 likely to decline under current management schemes. I
9 believe that that is evidence that has been led and
10 considered from expert witness, and I don't have any
11 further comment about that.

12 I believe the phrase "or the maintenance
13 of its current level of operations", the words which
14 you just read to me, refer to the idea that our
15 understanding of expert evidence presented to this
16 Board is that it is likely that the volume of wood
17 harvested will have to decline over the foreseeable
18 future, in the next decade or two, and consequently the
19 full maintenance of current level of operations is not
20 an alternative.

21 That, I believe, is the context in which
22 we made -- or I made that statement.

23 MADAM CHAIR: Excuse me, Mr. Freidin.

24 Dr. Muller, could you remind the Board
25 where that evidence was because you will --

1 DR. MULLER: I am referring primarily to
2 Professor Benson's evidence which was taken from --
3 which was led by Forests for Tomorrow.

4 MADAM CHAIR: Yes, all right.

5 MR. FREIDIN: Q. Has that got something
6 to do with this discussion of maximum allowable
7 depletion being greater than the amount of harvest at
8 the present time, which was your evidence?

9 DR. MULLER: A. Well, my comments have
10 to be based primary on my understanding as an economist
11 of the problems of forest economics, which I have
12 studied.

13 The problem is that when you convert a
14 large stand of mature timber to "a fully managed
15 forest", it will I think inevitably be the case that
16 over some period of time you are harvesting at a higher
17 volume, a higher volume per year than can be sustained
18 as a permanent level and, therefore, it seemed to me
19 entirely consistent in what I had read in Professor
20 Benson's witness statement that we should expect the
21 volume of wood being harvested in Ontario to decline
22 over the foreseeable future.

23 Q. All right. And to decline --
24 starting today?

25 A. Well, I am not competent to discuss

1 over the -- you know, today or five years from now.

2 Q. All right. The last thing I want to
3 do is review Mr. Benson's evidence with you. I mean,
4 whether he was right or wrong, I will have to deal with
5 that in argument.

6 Is there any specific part of Mr.
7 Benson's evidence that you can refer me to which you
8 believe he says that there will be a decline in the
9 volume harvested into the future?

10 If you can't do it now, will you do it by
11 way of an undertaking? I would just like to know --

12 MS. SWENARCHUK: Would you like the
13 answer from Forests for Tomorrow? I would be happy to
14 provide it to you.

15 MR. FREIDIN: Sure.

16 MS. SWENARCHUK: It is all of Volume 2 of
17 his witness statement in which he analysed wood supply
18 over the next rotation in, I think, virtually all of
19 the 19 management units, not quite all but most of
20 them.

21 MR. FREIDIN: All right. I think we will
22 leave that.

23 MR. COSMAN: Madam Chair, perhaps before
24 my friend leaves that. When you started this
25 discussion there was a slightly different aspect to it

1 and I think you summarized quite accurately what these
2 witnesses said in-chief when they said that there will
3 be relatively small changes if Forests for Tomorrow's
4 term and conditions were implemented.

5 But I think that answer which they gave
6 in-chief to Ms. Swenarchuk must be read in the context
7 or must be reviewed in the context of their concession
8 on cross-examination that they -- they ultimately made
9 the statement that they had done no study of the
10 economic impacts and that's the only expertise they
11 have, what the economic impact of implementing those
12 terms and conditions would have on the Industry.

13 So you have an off-the-cuff opinion from
14 their point of view that it wouldn't have a very large
15 impact, but they do concede that they did not study all
16 of the economic factors which among -- Dr. Muller even
17 outlined some of them that he would have considered in
18 order to really give a qualified opinion on that
19 subject.

20 So what you are left with is an
21 off-the-cuff opinion, but not one based on an economic
22 study.

23 MR. FREIDIN: Could I just have one
24 moment.

25 Q. Dr. Morrison, you made a comment that

1 Forests for Tomorrow's have not imposed any term and
2 condition which will affect the rate of the fall-down
3 or the length of rotation.

4 MS. SWENARCHUK: Can you give the context
5 for that, Mr. Freidin?

6 MR. FREIDIN: Exhibit 1696, overhead 12.
7 I don't have the actual...

8 It was in the context of discussing that
9 document that my notes indicate that you said, Forests
10 for Tomorrow have not imposed any term and condition
11 which affect the rate of the fall-down or the length of
12 the rotation.

13 Do you believe that's an accurate
14 reflection of your evidence? I can't refer you to the
15 transcript.

16 DR. MORRISON: A. My understanding of
17 Forests for Tomorrow's terms and conditions are that
18 there is no -- that they do not place any constraint on
19 the rate of decline. Various silviculture
20 recommendations which I believe are made in Forests for
21 Tomorrow's terms and conditions may place a constraint
22 on rotation age.

23 Q. What is the effect if there is an
24 imposed fall-down in terms of community stability or
25 wood supply as you understand it?

1 A. Well, the effect of a fall-down,
2 whether it be imposed or not, would be based on what
3 the impacts would be of the decline in the amount of
4 wood being harvested.

5 And depending on how the distribution of
6 that fall-down fell, as it were, and depending on the
7 extent to which various communities were or were not
8 dependent on forest industry, that fall-down could have
9 more or less severe consequences.

10 Q. Okay. Dr. Benson stated in Volume
11 278 of the transcript --

12 A. Which I think we do have.

13 Q. Yes, I think you do.

14 MS. SWENARCHUK: What's the page number,
15 please?

16 MR. FREIDIN: Page 49,985, line 6 to 13.

17 Q. I asked Mr. Benson -- I said:

18 "All right. So is it part of your thesis
19 that in order to get to the even flow
20 volume situation..." which is your
21 flat line on Exhibit 1969, overhead 12,
22 "...that on some management units in the
23 province that you should reduce the
24 amount of harvest below the harvest level
25 which is required to meet the mill demand

1 even though that harvest falls within the
2 maximum allowable depletion?"

3 And he said: "Yes."

4 That sounds to me that he is suggesting
5 an imposed fall-down. Do you agree?

6 A. No, I wouldn't agree because it seems
7 that what he is suggesting is simply that the amount of
8 harvest now should be reduced.

9 Q. Well, what is the fall-down? I
10 thought that's what the fall-down was; it was a
11 decrease from the harvest level now on your Exhibit
12 1696 down to a sustained yield level which was the even
13 flow volume situation that I was discussing with him.

14 What's the difference?

15 A. Well, I haven't read this section of
16 the transcript, so I'm not sure of the context of Mr.
17 Benson's comments, but it may be - and I don't know -
18 but it may be that he is making a comment about a near
19 term changes in harvest, for example, over the next
20 year or two or five years.

21 The fall-down, as it is typically been
22 described in the forestry literature, is a decline in
23 the volume that is harvested over the period of the
24 rotation age, 80 to a hundred years.

25 Q. You described, Dr. Morrison, as I

1 understood it, the fall-down being the period of
2 transition on Exhibit 1996, overhead 12, from the
3 present harvest down to the sustained yield level.

4 In fact, you refer to it as the level of
5 the transition period, and do you not agree, sir, that
6 you described that as the fall-down period?

7 A. That's correct.

8 Q. All right.

9 A. But if you consider what the scale on
10 that graph is, normally in the forestry literature that
11 decline would take place over a rotation period. So
12 for many of the simple timber supply models that are
13 used for timber supply planning, the length of the
14 transition period is a full rotation.

15 Q. I understood your evidence, sir, both
16 of you -- I understood you both to indicate that the
17 transition would be a gradual one, the transition
18 period in terms of volume of wood being harvested. Did
19 I not get the right impression?

20 A. Well, my understanding of Forests for
21 Tomorrow's concerns with respect to --

22 Q. No, can you just answer my question.

23 A. I'm getting there.

24 Q. All right.

25 A. My understanding of Forests for

1 Tomorrow's concerns with respect to ecological
2 stability and community stability is that they would
3 entail a gradual transition in most cases. It may not
4 be in all, but in most cases it would be a gradual
5 transition.

6 Q. I suggest to you that what Mr. Benson
7 said is not a gradual transition at all. He says
8 reduce it now even though it is required now and even
9 though it is within the maximum allowable depletion?

10 MS. SWENARCHUK: He doesn't say in that
11 quote which you read, Mr. Freidin, how much to reduce
12 it by and what period of time.

13 MR. FREIDIN: We will leave for argument,
14 Madam Chair.

15 MADAM CHAIR: Excuse me. Dr. Morrison,
16 if we make the assumption that in fact there won't be
17 any transition period because there is some
18 determination in the future that the sustained yield
19 level is in fact well within the grasp of current
20 harvest levels, let's just assume that.

21 DR. MORRISON: We are assuming that we
22 can sustain the present harvest indefinitely?

23 MADAM CHAIR: Yes. How does that affect
24 your view of doing cost/benefit analysis and of the
25 participation of non-timber resources?

1 Does that, in fact, make your position
2 simpler because it is not a matter of sharing a smaller
3 resource base?

4 DR. MORRISON: Well, my impression is
5 that in fact it would make it more difficult because
6 there would be a continued high level of demand on
7 forested land by the forest industry.

8 There would be -- in the literature I
9 have reviewed suggests that there is an increasing
10 demand for recreational uses of the forest and for
11 other non-timber uses of the forest. And based on that
12 evidence, it would seem to me that a cost/benefit
13 analysis and a much more careful consideration of
14 non-timber values would be extremely important and
15 increasingly important in the future.

16 DR. MULLER: May I comment that if we
17 knew the sustained -- the sustained harvests could be
18 sustained at their current level, it seems to me that
19 that would reduce the importance -- or I shouldn't say
20 it would reduce the importance. It might make concerns
21 about community stability a little bit less severe, the
22 concerns would be a little bit less heavy.

23 Because I think the assumption in your
24 statement was that since we can sustain the current
25 level of harvest, then considering ways of reallocating

1 the harvest in such a way as to provide a maximum net
2 social benefit would not lead us to consider
3 alternatives which will be shutting down towns and so
4 forth.

5 MADAM CHAIR: But your point would still
6 hold and that is you would still want to see forestry
7 conducted at the lowest possible cost?

8 DR. MULLER: I would still like to see
9 forestry conducted at the lowest social cost, including
10 taking into account important environmental costs.

11 MR. FREIDIN: Q. Dr. Morrison, you
12 stated that when harvest and renewal costs are
13 combined, strip cutting with natural and clearcutting -
14 and I assume you meant with planting - are comparable
15 in some cases.

16 When you said comparable in that context,
17 did you mean comparable in terms of costs?

18 DR. MORRISON: A. That's what I meant,
19 yes. And I believe Dr. Muller's evidence supports that
20 in addition to other work.

21 Q. Do you agree with me, Dr. Morrison,
22 that whether natural regeneratio would adequately
23 regenerate a cut-over will depend, at least in part, on
24 stand and site conditions?

25 A. Yes.

1 Q. And by stands conditions, that could
2 include things such as the species within the stand and
3 the age of the stand?

4 A. Well, if you are cutting down the
5 trees the species and age may be irrelevant.

6 Q. No, I am talking about if you are
7 going to use natural regeneration.

8 MS. SWENARCHUK: Well, Madam Chair, my
9 colleagues have been very precise about questions --
10 the questions they consider these individuals qualified
11 to answer. Dr. Morrison has a background in ecology
12 but not has not been qualified here as a forester or a
13 silviculturalist decision-maker..

14 Surely the kinds of questions that Mr.
15 Freidin has just put to Dr. Morrison was discussed at
16 length with many, many foresters before and he is free
17 to make his arguments out of that. Why move these
18 experts into an entirely new area of expertise?

19 MR. FREIDIN: I am content to move on.

20 DR. MULLER: May I comment on, though, as
21 an economist on the presumption of the question.

22 The question presumes that you can
23 measure adequacy somehow and there is a question about
24 what does it mean to say regeneration is adequate and
25 you have to come back with a question of, for what

1 purpose are you regenerating.

2 Now, it may be the case that regeneration
3 for the purposes of maintaining recreational hunting
4 and biological diversity type values is a different
5 question from the adequacy of regeneration for the
6 purposes of harvesting, and it may be that an attempt
7 to regenerate for the purposes of harvesting does not
8 yield a high net present value.

9 MR. FREIDIN: Q. All right. I can tell
10 you right now, gentlemen, that what I am going to do is
11 ask you a series of questions and the adequacy of the
12 regeneration will be defined based on the benchmark
13 that Forests for Tomorrow has put forward for
14 silvicultural adequacy; that is, to return the
15 harvested area to the same species and density. I have
16 a series of questions and that's going to be adequate
17 or acceptable regeneration.

18 Before I do that. Dr. Muller, you stated
19 in your evidence that the most critical factor driving
20 employment in single-industry towns is change in wood
21 cost and change in constraints on how much wood can be
22 cut each year.

23 Would you agree with me that when you are
24 dealing with an undertaking such as timber management,
25 which is long term and which involves the management of

1 a renewable resource, that the amount you can grow and
2 the species that you can grow is an equally critical
3 factor when you are discussing long-term community
4 stability?

5 DR. MULLER: A. Well, I think I made
6 those comments in the context of a discussion of what
7 factors would be important in determining the impact of
8 changes in silvicultural method, silvicultural
9 harvesting method on Industry employment.

10 In the long-run, it seems clear that the
11 amount of employment which will be based on an
12 extractive process such as lumbering for pulp and paper
13 production or sawmilling will depend on the volume of
14 wood being cut and you can't cut anymore wood than you
15 grow. So that's certainly true.

16 The second part of your question is, does
17 it depend on species composition. Now, it is my
18 understanding that the history of forestry in Canada
19 has been characterized by a shift in the species being
20 utilized; that is, when some species are very prevalent
21 they are utilized in preference to other species, but
22 there has been a shift and in particular there has been
23 a shift towards the utilization of hardwoods like
24 aspen.

25 So I think that we can confidently say

1 that over a period of a hundred years or so the
2 Industry will be striving to make most efficient use
3 from its point of view of whatever sources of wood
4 fiber are on the ground.

5 Q. Okay. I am going to, as I indicated,
6 ask you a series of questions using Forests for
7 Tomorrow's benchmark for adequacy and that is to
8 regenerate the same species and the same density on the
9 sites.

10 So for the purposes of my question I
11 guess we can assume that Forests for Tomorrow thinks it
12 is important that you regenerate the same species.

13 MADAM CHAIR: Mr. Freidin, let's take the
14 witnesses right to the heart of what your questions
15 will be because we have been through these questions
16 before with other witnesses.

17 What you want to get out of these
18 witnesses is their opinion of what happens in a
19 situation when an area has been cut. Forests for
20 Tomorrow has a condition that you have interpreted to
21 mean that you must grow back in that area that's been
22 cut the same species and the same density.

23 MR. FREIDIN: Right.

24 MADAM CHAIR: Therefore at some point you
25 have to throw out your economic evaluation of natural

1 regeneration because you may be required to do
2 artificial regeneration to achieve that objective.

3 MR. FREIDIN: That is one thing I think I
4 have sort of canvassed with these witnesses.

5 MADAM CHAIR: Then what else do you want
6 to get out of it?

7 MR. FREIDIN: What I want to canvass with
8 these witnesses is they have made certain assumptions
9 in their witness statement and in their case study as
10 to what volume will be returned to the site through
11 natural regeneration as opposed to artificial
12 regeneration.

13 I am going to put to these witnesses a
14 number of hypothetical situations and ask them -- to be
15 quite frank, I am going to suggest to them through a
16 series of questions that there is a great debate
17 between some of the parties at this hearing as to
18 whether natural regeneration will indeed work in all
19 cases.

20 MADAM CHAIR: I don't think these
21 witnesses can comment on whether it is --

22 MR. FREIDIN: No, I am not asking them to
23 comment on that evidence. I am going to ask them to
24 assume for the purposes of my question that the
25 conclusion of the Board is that it will work or that it

1 won't work in all cases and all I want to ask them is
2 if the situation -- if my hypothetical is correct, what
3 effect, if any, does it have on the conclusions that
4 they reached in their case study because I can tell
5 you, Madam Chair, I think they have made their
6 conclusion based on an assumption in relation to what
7 will grow back naturally.

8 I think they are wrong. Whether they are
9 wrong will be a matter of argument in terms of who is
10 right in terms of silviculture, the Ministry of Natural
11 Resources and the Industry or Mr. Marek and Mr. Benson,
12 but you will have to decide who is right on that issue
13 and how you decide on that issue may affect the weight
14 which should be given to the evidence of these
15 witnesses.

16 And I want to know from these witnesses
17 the conclusion on what works silviculturally is this,
18 what effect does that have on their conclusions. And
19 if the conclusions that you reach on what will work
20 silviculturally is that, what does it mean for their
21 conclusion.

22 MADAM CHAIR: So you are saying that you
23 want them to discuss what difference it will make using
24 those assumptions between selecting B or alternative C?

25 MR. FREIDIN: Absolutely.

1 MADAM CHAIR: They didn't talk about
2 volume so much as they talked about rotation periods.

3 MR. FREIDIN: Well, they talked about
4 volumes.

5 Q. You can confirm for me, gentlemen,
6 that you did your case study on the basis that you were
7 harvesting 130 cubic metres of wood from the forest
8 which is there now and that if you in fact regenerated
9 naturally you would get back the same volume, 130 cubic
10 metres, and if you regenerated it artificially you
11 would get back 190? Is that not correct?

12 DR. MULLER: A. That is correct.

13 Q. 195.

14 A. Well, the precise assumption that I
15 embodied in the case study for purposes of illustration
16 was that artificial regeneration would lead to 50 per
17 cent greater than natural occurring yields, that
18 natural -- alternative B would lead to naturally
19 occurring yields and that alternative D would lead to
20 80 per cent of naturally occurring yields.

21 I also assumed for purposes of the case
22 study that artificial regeneration would lead to a
23 rotation period of 80 years and that natural
24 regeneration would yield a rotation period of 100
25 years.

1 MR. FREIDIN: So they made those
2 conclusions and I think those conclusions are in error.

3 I am going to make submissions at the end
4 of the case that they are in error, but I want to know
5 from these witnesses, because they are the economists.
6 I want to know if my interpretation of the evidence is
7 correct, what effect -- I want to explore with them
8 what effect is the error that they have made, if an
9 error is found to have been made in their assumption,
10 on their conclusions.

11 MADAM CHAIR: What is the error you are
12 saying has been made, that natural regeneration will
13 never work or it will work some of the time?

14 MR. FREIDIN: That is right.

15 And if allow me to proceed I think I can
16 do it in a fairly quick and logical fashion so it will
17 be very clear to the Board and the witnesses, in
18 fairness to the witnesses, to see where I am going.

19 MADAM CHAIR: All right.

20 MR. FREIDIN: Q. You stated, Dr. Muller,
21 that the conclusions which could be valid based on your
22 case study -- you said I assumed something regarding
23 yield of natural versus artificial and I guess you have
24 just explained that to the Board.

25 You also said that you would hold that

1 conclusion No. 1, which was that modified harvesting
2 cuts are the most competitive in the situation shown,
3 is robust and you feel it is a conclusion we can rely
4 on.

5 DR. MULLER: A. Well, I think the
6 conclusion was that there are -- the conclusion was
7 that it's reasonable to investigate the cost comparison
8 on timber values alone and that the analysis showed
9 that in some cases modified harvest plus natural
10 regeneration would lead to a net present value of
11 timber values which was comparable, and in some cases
12 greater than the alternative C.

13 Q. Would you agree with me, though, if
14 it was established that the situation that you have
15 shown is not the situation which actually would exist
16 in the field in reality, then there would be some
17 question as to the validity of your conclusions?

18 A. I don't think there would be any
19 question about the validity of the method. There might
20 be questions about the circumstances under which one
21 alternative outranked another.

22 Q. Fine. Now, you did your case study
23 based on spruce. Was it a spruce stand?

24 A. Well, since I am not a forester I
25 tried to avoid getting into any more detail than to say

1 it was conifer softwood and I drew my -- I did this on
2 the basis of a small amount of consultation with
3 Professor Benson.

4 Q. And, again, could you tell me what
5 was the volume of spruce that you assumed would come
6 back on the spruce site when in fact it was regenerated
7 through natural regeneration means?

8 This is either B1 or B2. What was the
9 volume in relation to the volume which was there
10 originally?

11 A. In all cases I assumed that the
12 second forest would have the same yield of wood as the
13 first forest.

14 Q. Okay. So is it fair to say that for
15 your conclusion regarding net present value of natural
16 versus artificial to apply to all spruce sites, natural
17 regeneration would have to work on all spruce sites all
18 of the time; i.e., return the site to the original
19 volume of spruce all the time?

20 A. Not at all.

21 Q. Why not?

22 A. Because from my -- first of all, I
23 have never suggested that my analysis applies to all
24 spruce sites in Canada or northern Ontario.

25 Secondly, the important thing is the

1 relative success of artificial methods compared to
2 natural methods, and I would need to have expert
3 information about the appropriate assumptions to plug
4 into the model to explore the consequences of different
5 assumptions about natural -- sorry, let me put it this
6 way.

7 If you wanted to use expert advice on the
8 probable yield of the alternative methods, then one
9 could incorporate this into the model which I have put
10 forward and you would be capable of producing
11 alternative graphs which might show different rankings
12 of the various alternatives.

13 I think -- I don't think it's necessary
14 to qualify this very much, but I do think that I did
15 have quite a bit of discussion about the sensitivity
16 tests that I did and that those sensitivity tests led
17 me to feel that this was not a hare trigger thing, that
18 any one small change in assumptions would dramatically
19 change my inferences.

20 Q. All right. Well, there may be some
21 discussion at some later date as to whether the
22 differences were small.

23 If the Board based on all of the evidence
24 concludes that natural regeneration does not work on
25 all spruce sites all of the time, then on the sites

1 where you do not get back the same volume that you
2 assumed in your case study, your case study would be
3 suspect? You would have to sort of -- you couldn't
4 just assume the conclusions were correct?

5 A. Well, in applying the method that I
6 have proposed to any particular site, you should take a
7 careful look at these assumptions.

8 Now, in the case that you refer to, it's
9 clear that you should investigate both the assumptions
10 about natural regeneration and the assumptions about
11 artificial regeneration.

12 Q. Sure. So I take it that your case
13 study in no way would support a silvicultural
14 prescription that natural regeneration should be used
15 on all spruce sites across the area of the undertaking
16 because it would give you the same volume; am I
17 correct?

18 A. Well, I did not draft the terms and
19 conditions for Forests for Tomorrow. I am here as an
20 economist.

21 In my opinion, my case study could be
22 used to support a blanket prescription in the following
23 way: You might say that Professor Muller's evidence is
24 that based on timber values alone the choice is
25 often -- the difference in net present value amongst

1 the alternatives based on timber values alone is often
2 quite small. And since there are unmeasured and
3 unevaluated environmental costs of current methods
4 compared to the methods advocated by Forests for
5 Tomorrow, it is incumbent on the wise manager to select
6 the modified harvest techniques because they provide us
7 with approximately the same net present value on easily
8 measured terms and they also provide us with the
9 environmental benefits.

10 If they were to ask me for economic
11 advice to support their case, that is what I would tell
12 them.

13 Q. But from an economic point of view,
14 looking at it purely from the timber side, from the
15 silvicultural side, would you want to know in making
16 your recommendations based on economics what volume you
17 could actually obtain on that site in the next rotation
18 through natural; in other words, would you want to know
19 whether you would get the same amount or 50 per cent of
20 that amount?

21 That would be important, would it not, in
22 terms of your advice on any particular spruce site?

23 A. I think in considering timber values
24 alone one should certainly take careful note of the
25 best advice that one has about the probable yields

1 under all the alternative methods being considered.

2 Q. Right. Your case study had certain
3 assumptions regarding the volume you would get back
4 from natural on those sites.

5 Would you agree with me that if the
6 evidence establishes that on many spruce sites you will
7 not get back that volume, that you will get back
8 considerably less than that volume if you use natural,
9 that your comparison, your rankings could very well be
10 out of whack.

11 A. Well, I would be very careful about
12 that because I think that the main factors driving the
13 rankings are, first of all, the accelerated harvest
14 permitted by assumption of 80 years in my case study as
15 compared to the accelerated harvest of 100 years
16 permitted by assumption in my alternative B.

17 Secondly, the immense present costs of
18 silviculture compared to the relatively small present
19 value of the future harvest and, consequently, I am
20 concerned -- I certainly will admit that the results,
21 the detailed results will depend on the assumptions,
22 but I am not prepared to say that the whole thing would
23 be out of whack.

24 MADAM CHAIR: Dr. Muller, if you doubled
25 the rotation age assumed for natural regeneration,

1 would that -- is there an immediate large impact and
2 would you get a negative present value for alternative
3 B?

4 DR. MULLER: What are you assuming about
5 the present harvest schedule? Are you assuming that we
6 would spread the harvest out over 200 years rather than
7 100 years?

8 MADAM CHAIR: No. You are assuming in
9 the second rotation how long it would take to grow
10 back. You are assuming the yield would be 130 cubic
11 metres with a rotation age of 100 years.

12 DR. MULLER: That's right.

13 MADAM CHAIR: But let's say natural
14 regeneration -- we find out it takes twice as long to
15 do that as we thought it might, what does that do to
16 net present value? Does it have a large effect or not
17 much of an effect because you are not investing a lot
18 of silviculture dollars?

19 DR. MULLER: I think it will have an
20 effect on the net present value of the second harvest,
21 but since the net present value of the second harvest
22 was small in the first place, it might not affect the
23 rankings very much.

24 I think the really critical thing in
25 terms of measuring net present value is how fast you

1 cut down the present forest, and anything that
2 accelerates the rate at which you cut down the present
3 forest will tend to increase the net present value of
4 the whole scheme. And I am commenting, of course, on
5 the basis of timber values alone.

6 MR. FREIDIN: Could I just have one
7 moment, Madam Chair.

8 MS. SWENARCHUK: Could I just once again
9 remind the Board, if this line of questioning is to
10 continue, that Forests for Tomorrow's terms and
11 conditions do not in any way prescribe the use of
12 natural regeneration on all sites, whether it will work
13 or not, but only on sites capable of natural
14 regeneration.

15 MADAM CHAIR: Yes. We are talking about
16 Mr. Freidin's interpretation of your terms and
17 conditions, Ms. Swenarchuk.

18 MR. FREIDIN: I think that was one of
19 ones that you suggested that perhaps Ms. Swenarchuk and
20 I discuss, which we will.

21 If I could just have one moment.

22 MR. MARTEL: But you don't -- your case
23 is not a simple way of applying the same assumptions
24 and everything to every plot of land in the province,
25 all conditions being the same, that that isn't the

1 case.

2 DR. MULLER: No.

3 MR. MARTEL: Assumptions will vary and so
4 you can't, or can you, make the generalized conclusions
5 that I am afraid Mr. Freidin is trying to get you to
6 comment on because I am having difficulty following
7 where we are going, quite frankly, because there are
8 different assumptions, different plots of land.

9 Can you simply say, I take this case and
10 apply it to everything, willy nilly? That's the
11 difficulty I am having in trying to understand where we
12 are going.

13 DR. MULLER: Well, I certainly would not
14 wish to recommend that we take conclusions of one case,
15 real or hypothetical, and apply them willy nilly
16 everywhere.

17 It is my opinion as an economist that we
18 will do better for the province by ensuring that there
19 is a planning process which considers these things at
20 the level of the individual forest management unit.

21 MR. MARTEL: And I assumed that's what
22 you were saying. There seems to be an attempt to make
23 a general application of it at this point in time and I
24 am having some difficulty, based on what you have just
25 said, Dr. Muller, and where Mr. Freidin is taking this.

1 I put that out just so I understand where we are going.

2 MADAM CHAIR: I think part of the problem
3 is all we have to rely on, all the Board has to rely on
4 is your hypothetical case and we can do no more than
5 try to understand what your assumptions are and try to
6 understand how they would be applied at the FMU level.

7 That leaves us at a bit of a loss, as you
8 can appreciate, because there is nothing predictable in
9 this hypothetical example.

10 DR. MULLER: Well, I would undertake to
11 provide the Board with the results generated by my
12 model under any assumptions that -- any variation in
13 the assumptions -- any numerical variations in the
14 assumptions that are listed on that general page, page
15 191. If that would help you I could crank the model
16 out for various numerical assumptions.

17 MR. COSMAN: You will be back with more
18 cross-examination.

19 MADAM CHAIR: That's a new piece of
20 evidence. We will talk that over.

21 MR. MARTEL: It is the general
22 application that bothers me; how one can attempt to
23 apply every conclusion.

24 I mean, I could ask you a thousand
25 different questions and come up a thousand different

1 answers on any one of the assumptions that want to do
2 and trying to make a generalization across the board
3 just depends on the questions that are being asked.

4 The answers we are receiving are highly
5 dependent on the questions that are being asked, yet I
6 think we can ask a hundred different questions and get
7 a hundred more answers. That's what's worrying me
8 right now. Maybe I'm wrong.

9 MR. FREIDIN: Well, you could ask a
10 hundred different questions and probably get a hundred
11 different answers, but I think -- there is a reason
12 that I am asking the questions and all of this will be
13 pulled together in argument and then we will know
14 exactly why I asked the question and what the
15 significance is that I attribute to the answers and I
16 will suggest to you the conclusion you should draw in
17 your decision based on that. That's the best I can do
18 right now.

19 Q. We have talked about this term and
20 condition of Forests for Tomorrow which says, when you
21 harvest you shall endeavor -- it now says:

22 "You shall ensure that the site is
23 returned to the same species and density.

24 Let's assume, Doctors, that that is the
25 objective, we are now talking silviculture, that's the

1 objective; you have got to return to the same species
2 and density. That may be for economic reasons, it may
3 be for all kinds of reasons.

4 If the Board concludes based on the
5 evidence that achievement of that objective cannot
6 occur - I am just picking a number out of the air - on
7 50 per cent of the spruce sites in the area of the
8 undertaking if you use natural regeneration, but that
9 you can in fact obtain that objective through
10 artificial regeneration, do you agree that you should
11 use artificial regeneration?

12 DR. MULLER: A. No, I don't.

13 Q. And I will let you explain why not.

14 MS. SWENARCHUK: Could we just make it
15 clear to the witnesses that the question being put to
16 them is not a question that arises out of Forests for
17 Tomorrow's terms and conditions.

18 MR. FREIDIN: It sure is. It rises out
19 of -- well, that's correct. It arises out of their
20 terms and conditions and an understanding of what -- if
21 the practical implication of their terms and conditions
22 is what the Ministry has said in their case that you
23 won't get --

24 MADAM CHAIR: Look, Mr. Freidin and Ms.
25 Swenarchuk, the Board told you a few weeks ago that we

1 are not going to listen to any more discussion about
2 this point.

3 You two go away and sort out the wording,
4 you come back to us and if you haven't agreed yet on
5 what the wording of that is --

6 MS. SWENARCHUK: Madam Chair, with great
7 respect, if Mr. Freidin would read to the witnesses the
8 statement which makes it clear that Forests for
9 Tomorrow only advocates the use of natural regeneration
10 on sites capable of natural regeneration, then I would
11 have no objection to the question being put, but the
12 assumption that Forests for Tomorrow's position is to
13 use natural regeneration everywhere, whether it works
14 or not, is an incorrect characterization of the
15 position.

16 DR. MULLER: May I just point out that my
17 answer would not change whether or not this was --

18 MADAM CHAIR: Go ahead and give us your
19 answer, Dr. Muller.

20 DR. MULLER: Well, my answer is that
21 there is an alternative that's not being considered,
22 which is not to harvest the wood at all.

23 And if it turns out that the only way of
24 restoring a stand to its original position, for these
25 reasons which you did not specify, if the only way in

1 which we can cut down the wood is to involve ourselves
2 in an incredibly costly artificial regeneration effort,
3 then it is quite reasonable to say that we as a
4 province -- that we in the province would be better off
5 not cutting down that particular section of forest.

6 MR. FREIDIN: Q. If it turned out that
7 that was the case, you couldn't regenerate except
8 through artificial on 50 per cent of the area of the
9 undertaking, you would just say: Well, don't cut 50
10 per cent of the area of the undertaking. That would be
11 the logical extension of what you have said?

12 DR. MULLER: A. The logical -- yes, it
13 certainly would be and you would save an awful lot of
14 money which you could then use to promote the welfare
15 of people in northern Ontario.

16 Q. All right. So if the Board concludes
17 that there are things out there called rich upland
18 mixedwood sites where you can't get back the same
19 amount of conifer which was there in the first place
20 unless you use artificial, you would say: Well, just
21 walk away, don't even cut the stuff because you are
22 just throwing good money away.

23 A. Well, remember, this discussion was
24 based on the hypothesis that the constraint was to
25 restore the stands to its initial conditions and

1 stocking level in every case.

2 The economic principle stands the
3 province would be better served by not harvesting that
4 wood and the only way in which we can harvest it is to
5 give the industry a huge subsidy so it can be replanted
6 again.

7 Q. Okay.

8 MADAM CHAIR: Mr. Freidin, should we have
9 a coffee break or are you almost finished?

10 MR. FREIDIN: No, we can have a break. I
11 can't finish by the break. If you want to keep going
12 to twenty to.

13 MADAM CHAIR: Are you going to be
14 finished in ten minutes?

15 MR. FREIDIN: No.

16 MADAM CHAIR: Break time.

17 MR. FREIDIN: I will probably shorten it
18 up because of the break.

19 MS. SWENARCHUK: Will you finish by noon,
20 Mr. Freidin?

21 MR. FREIDIN: Absolutely.

22 ---Recess at 10:30 a.m.

23 ---On resuming at 10:50 a.m.

24 MADAM CHAIR: Please be seated.

25 MR. FREIDIN: Q. I just want to

1 follow-up on a question that the Chair asked you, Dr.
2 Muller. I don't know whether I got your answer down
3 correctly or not, but I think she posed a question as
4 to what would happen if you had a 200-year rotation.

5 And I believe you asked, Madam Chair,
6 would that effect the level of harvest now.

7 Was that your question?

8 MADAM CHAIR: No. My question was when
9 we were trying to discern what would happen to net
10 present value if we changed the assumption, if we
11 assume that natural regeneration would take twice as
12 long to be effective to give a yield of a second
13 harvest of a 130 cubic metres, what would that do to
14 the outcome of net present value.

15 And Dr. Muller's answer I believe is it's
16 not -- he doesn't think it would make a whole lot of
17 difference because it is the rate that you cut the
18 first harvest that drives his analysis.

19 MR. FREIDIN: All right.

20 Q. My question for you, Dr. Muller is,
21 is it your understanding then the way maximum allowable
22 depletion is calculated, that if you in fact extended
23 the rotation by a hundred years, if you made it 200
24 years, that that would have no effect on the amount you
25 can harvest today?

1 DR. MULLER: A. That's a policy decision
2 on the way in which you link current harvesting to
3 future assumptions about future yield.

4 Q. But if by extending the rotation to
5 200 years, by applying the algorithm or doing the
6 maximum allowable depletion calculation it in fact
7 reduced the amount you could harvest now, it would
8 affect the net present value; would it not?

9 A. Yes, it would.

10 Q. Thank you.

11 MR. FREIDIN: Could I file as the next
12 exhibit a copy of an answer to interrogatory No. 7
13 asked by the Canadian Association of Single Industry
14 Towns.

15 MADAM CHAIR: That's Exhibit 1710.

16 ---EXHIBIT NO. 1710: Answer to interrogatory No. 7
17 asked by the Canadian Association
of Single Industry Towns.

18 MR. FREIDIN: Q. The question asked was:
19 "Shouldn't the value of investment at
20 the mills and the requirement to run at
21 efficient levels also be a factor in
22 estimating the value of additional forest
23 land to be withdrawn."

24 It was made in the context of statement
25 3.1.2. You weren't sure of the question, so you

1 reinterpreted it.

2 DR. MULLER: A. That's correct.

3 Q. And you say:

4 "If a management alternative of removing
5 forested land for timber production is
6 being considered, should that investment
7 in mills dependent on timber from that
8 forested land and a requirment for the
9 mill to run at efficient levels be
10 included in valuing the forested land."

11 That's how you reposed the question.

12 You answered that question by saying:

13 "If the removal of forested land from
14 timber production will lead to losses for
15 the mill owner (example, if the mill will
16 not be able to operate efficiently or if
17 there are no alternative sources of
18 timber and the mill might shut down),
19 then those losses should be included in
20 the analysis of the management
21 alternative."

22 And I am just wondering, is that the same
23 point, Dr. Muller, that you you were making when you
24 were answering a question from Mr. Cosman when I
25 believe you indicated that if the terms and conditions

1 had the effect of changing the output of wood and that
2 change in the output of the wood affected the jobs in
3 the mills, if there was that linkage, I believe you
4 said that you would have no quarrel using the value of
5 the jobs in the cost/benefit analysis?

6 Is that the same point?

7 DR. MULLER: A. As long as you mean by
8 the value of the jobs not the payroll, but the
9 difference between what the individual could have
10 earned elsewhere and his current earnings.

11 Q. With that qualification, then, we are
12 talking about the same thing?

13 MADAM CHAIR: Excuse me, Dr. Muller.

14 Are you saying in your cost/benefit
15 analysis a social cost would be the difference in the
16 value of the salaries or the money that people earned
17 in the mill versus what they can earn somewhere else if
18 they can get another job?

19 DR. MULLER: Well, we have to be quite
20 careful about what it is -- about the difference
21 between the ultimate thing we are measuring and the way
22 in which we are measuring it.

23 I mean, the social cost of employing
24 labour in the forest industry is the output that we
25 forego in the other industries in which that labour

1 might be employed.

2 I propose that one way of capturing the
3 output that we forego in the other industries is by
4 looking at the earnings that an individual makes in the
5 alternative occupation.

6 Now, if an individual earns a lower wage
7 rate in an alternative occupation, then that lower wage
8 rate is a reflection of the goods and services that he
9 or she produces in the alternative occupation and,
10 consequently, the difference between that wage rate and
11 the wage that the person is earning in the forest
12 industry represents a benefit to that individual from
13 the existence of the forest industry and it is a
14 legitimate benefit to count in a cost/benefit analysis.

15 MADAM CHAIR: I thought it would not be a
16 benefit, it would be a cost?

17 DR. MULLER: Well --

18 MADAM CHAIR: The other side of the
19 ledger.

20 DR. MULLER: I think essentially the side
21 of the ledger you put it on is irrelevant as long as it
22 has the correct sign.

23 The point -- the way I find it easiest to
24 think about this is that when labour or any other input
25 to forest production has as its best alternative an

1 occupation which yields lower earnings than it is
2 currently receiving, then the social opportunity cost
3 of using that input in forest production is lower than
4 the accountants would make us believe it because they
5 would just use the payments to the labour and,
6 consequently, the net benefit of the forest industry is
7 greater than it would be on first -- would be
8 calculated to be on first glance.

9 MR. FREIDIN: Q. Just sort of putting
10 that into a language that perhaps I can understand. If
11 we have the situation in which we described where in
12 fact there was a change in the output of wood which
13 affected jobs in the mills--

14 DR. MULLER: A. Yes.

15 Q. --what you are saying is, in that
16 situation the difference between the wage in the mill
17 and the next best alternative--

18 A. Yes.

19 Q. --could be regarded as a benefit, as
20 a real benefit of the industry?

21 A. If you are picturing an increase in
22 employment due to an increase in production, then you
23 would include the difference in wages as a benefit of
24 increasing employment.

25 Conversely, if you are thinking about a

1 reduction in employment--

2 Q. That's the one I am thinking of.

3 A. --you might sensibly think of the
4 loss of that differential as a lost benefit from this
5 particular -- or a cost.

6 Q. Okay. And you would include that in
7 your cost/benefit analysis in the situation we have
8 described?

9 A. Yes.

10 MR. MARTEL: In the real world, what do
11 you do when you have got 8 per cent or 9 per cent
12 unemployment, as is the case right now?

13 Would you apply this -- I guess can you
14 apply or do you apply it regardless of what the
15 conditions are because you say we can retrain, we can
16 relocate?

17 The question is: What do you retrain
18 for, what do you relocate for when you have got
19 massive, massive unemployment occurring daily in
20 Ontario because of another policy called Free Trade
21 that people say are causing it. What do you do then?

22 DR. MULLER: Well, there are comments in
23 the benefit/cost guide from the Treasury Board which
24 apply to this case and I think the general comment is
25 to -- the general presumption is that the overall level

1 of unemployment in the economy is associated with large
2 scale economic decisions by the federal government and
3 the provincial government and that it is inappropriate
4 to take them into account in the selection of
5 individual projects; that is to say, one assumes
6 basically that the overall level of unemployment will
7 be the same whether we conduct this project one way or
8 another way and, consequently, it is not a relevant
9 factor in choosing the method of carrying out the
10 project of managing forests.

11 MR. FREIDIN: Q. Now, is it fair to say
12 that you did not include as a -- you said that in
13 certain circumstances that we described where the
14 output of wood affected jobs in the mills you would
15 include the lost income if the next best alternative
16 was lower? You would include that cost or lost benefit
17 in your cost/benefit analysis; correct?

18 DR. MULLER: A. It could be included,
19 yes.

20 Q. You didn't do that in your case
21 study; did you?

22 A. I did not.

23 Q. Is the reason that you didn't do that
24 because you didn't believe there was that linkage, that
25 there would be in fact a change in the output of wood

1 that would affect jobs?

2 A. The reason I did it --

3 Q. The reason you didn't do it.

4 A. Sorry. The reason I conducted the
5 study in the way in which I did was that I believe that
6 it is important to start from the simplest assumptions
7 and the most easily measured costs and then adjust from
8 there, and I believe that I was interpreting correctly
9 the advice given by the Treasury Board in doing that.

10 I also was constrained in terms of total
11 amount of time and I would have no objection to trying
12 to extend the analysis to include considerations of
13 that differential.

14 I would remind you and the Board that
15 there is quite a bit of economic literature that
16 suggests that the adjustments -- that this kind of
17 adjustment should not be made routinely and that when
18 you do make the adjustment the numbers don't change all
19 that much - often, often don't change that much.

20 Q. But by not including that particular
21 factor in your cost/benefit study, by restricting
22 yourself to what you said was a simple analysis, have
23 you not done what you said should not be done and that
24 is, to have excluded or ignored those important
25 qualitative non-measurable factors which ultimately

1 have to be taken into account in making the decision
2 amongst alternatives?

3 A. Well, I don't think I have because
4 the first question is, what do the measured costs and
5 benefits say; and the second question is, how sensitive
6 is your choice between harvest methods or between
7 alternatives to your assumption about the value of
8 wood.

9 I conducted the study -- I proceeded from
10 the base case with \$25 wood to doubling the value of
11 wood and conducting my sensitivity analysis on that
12 basis. And, finally, I think that -- maybe I should
13 leave it at two points.

14 Q. But even though -- and we will get to
15 your evaluation of wood in your sensitivity analysis.

16 Even though you did that, is it fair to
17 say that you ignored the downstream benefits and costs
18 in your analysis?

19 A. Well, my analysis taken as my
20 contributions to the witness statement as a whole I
21 don't think I have, but my analysis as embodied in that
22 particular set of numbers, yes.

23 MADAM CHAIR: Dr. Muller, let's suppose
24 that at some point in the future the Board approved the
25 idea that cost/benefit analysis should be undertaken at

1 the forest management unit level and let's assume that
2 the government made one of those decisions which
3 economists consider to be irracionale, let's say the
4 government said: As a given policy we will not accept
5 job loss in the forest industry, so we want you to do a
6 cost/benefit analysis at each FMU, but as one objective
7 decisions must be made that will not involve job losses
8 in the forest industry, could you still conduct a
9 cost/benefit analysis that would make some sense in
10 your point of view?

11 DR. MULLER: Well, first of all, I don't
12 think that that decision would protect the environment
13 in a way that it should be protected.

14 But, secondly, if you make that
15 assumption that you are going to constrain your
16 analysis by not accepting any loss of forestry jobs, I
17 guess there are still questions associated with what's
18 the best way in which to use your labour, and it would
19 still be useful in my opinion to choose the
20 alternatives which maximize net present value, taking
21 into account environmental costs as best you can.

22 DR. MORRISON: If I might just add.

23 With respect, Madam Chair, I think that
24 that sort of a constraint that might be imposed as a
25 provincial policy would be -- it would be difficult to

1 evaluate whether in fact you were able to do that
2 against the background of modernization in the forest
3 industry leading to job losses naturally.

4 MADAM CHAIR: I guess what I am saying
5 is, you would take the cost or benefits of labour out
6 of the cost/benefit analysis and then you are left with
7 looking at the value of wood extraction versus
8 environmental costs in the absence of the labour
9 component?

10 DR. MULLER: Well, it's -- I mean, I have
11 difficulty with the question because it goes so much
12 against the grain for economic analysis.

13 One of the problems is associated with
14 the costs which are not directly labour costs; for
15 example, the costs of the seedlings that you use in
16 artificial regeneration and the cost of planting those
17 seedlings.

18 Well, there is an important labour
19 component to those cost as well and your question
20 wasn't posed precisely enough to know whether those
21 jobs were to be preserved or not.

22 So I find it -- when you say we would
23 just take labour costs out of the analysis, I am not
24 sure whether that would mean taking the direct labour
25 costs out or taking the direct and indirect labour

1 costs out.

2 I am certain that you can constrain the
3 analysis sufficiently that the Ministry of Natural
4 Resources' plans appear to be the economically most
5 viable option. I am sure that we can find a set of
6 constraints which will show that the Ministry is doing
7 the right thing, but I don't think that that is -- I
8 don't think that's an appropriate exercise of economic
9 analysis.

10 MR. FREIDIN: I was going to ask you to
11 be a witness in reply, Dr. Muller.

12 Q. I am not too sure I got the answer to
13 my question about real downstream benefits and costs.

14 Let me rephrase the question. If wood
15 supply is reduced significantly through terms and
16 conditions or whatever means, and that affects the mill
17 output --

18 DR. MULLER: A. By mill you mean sawmill
19 and pulp and paper.

20 Q. Sawmill and pulp and paper, yes. Is
21 it fair to say that your case study has ignored some
22 real downstream costs and benefits?

23 A. If you don't mind my being technical
24 for just a moment. If the marginal cost is different
25 from the price received by those mills, yes.

1 Q. If the marginal...

2 A. Cost of production is lower than the
3 price received by those mills for their product, then
4 yes, I have ignored some downstream benefits.

5 Q. Thank you. Let's talk a moment about
6 your sensitivity analysis and perhaps we should just
7 have page 202 of the witness statement in front of us,
8 which is your Table No. 8.

9 Do you have that, Dr. Muller?

10 A. I do have that, yes.

11 Q. I guess where I will be looking at
12 primarily but not at great length is Item C, variation
13 in the price at the mill with allowable cut effect.

14 A. Yes.

15 Q. This is where you have used in the
16 first vertical column the numbers and the various
17 prices of wood at the mill door of 10 up to 100; is
18 that right?

19 A. That's correct.

20 Q. If the proper approach is to include
21 downstream benefits in the cost/benefit analysis, would
22 you agree that in that situation the value of wood
23 could be more than \$50, it might be more than \$50?

24 A. I can only agree that it would be
25 higher than the base case.

1 Q. All right. It could be higher than
2 50, it could be higher than 75, it might be higher than
3 100 if you included the downstream benefits and costs?

4 A. Well, that would have to be checked
5 for realism against --

6 Q. Sure.

7 A. There are some constraints on how
8 high it might be.

9 Q. Right. But if by including those
10 real costs and benefits you got the value of wood --
11 how high do you have to put the value of wood here
12 according to your figures so that you have a positive
13 net present value for Alternative C?

14 A. Sorry, a positive present value or a
15 net present value which exceeds the net present value
16 of B?

17 Q. Let's start out with positive. It
18 could be \$50?

19 A. According to the table. The first
20 entry with a positive net present value for Alternative
21 C is for \$50 wood.

22 Q. And it is pretty close to alternative
23 B1 which is the three-coup system?

24 A. That's correct.

25 Q. Is that analysis that you have

1 done -- does that show that you have to be at 50 to get
2 to a positive net present value or somewhere between 25
3 and 50?

4 A. Somewhere between 25 and 50.

5 Q. Are you able to indicate where
6 between 25 and 50 you have to get to?

7 A. I wouldn't like to hazard a guess.

8 Q. Okay. In terms of getting to a
9 situation where Alternative C has the highest positive
10 net present value, we see that entry for the first time
11 when you get the value of wood of \$75?

12 A. That's correct.

13 Q. Again, it would be the same, you
14 would not venture a guess as to where between \$50 and
15 \$75 Alternative C overtakes B1 and B2?

16 A. That's fair enough. I mean, I can
17 tell you it is probably closer to 50 than 75.

18 Q. Thank you. I think it was you, Dr.
19 Muller, who made a comment that most practitioners of
20 cost/benefit analysis say that input/output should be
21 caused used carefully in the context of cost/benefit
22 analysis. I think that was you.

23 A. It sounds like a comment I would make
24 anyway.

25 Q. All right. Well, you made the

1 comment in Volume 286 at page 51,217.

2 You, as I understood your evidence, were
3 somewhat critical by the approach that was taken by the
4 Ministry in their Panel No. 5, that they did an
5 input/output analysis or reported results of
6 input/output analysis and they didn't do a cost/benefit
7 analysis?

8 A. I am, as a matter of general
9 principle, critical of statements that say "x" tens of
10 thousand of jobs depend on the forestry industry.

11 Q. All right.

12 A. Or any other industry.

13 Q. All right. If the purpose of the
14 evidence in Panel 5 of the Ministry's case was to
15 demonstrate what the effect one sector of the economy
16 had or has on other sectors of the economy, would you
17 agree with me that an input/output analysis is an
18 appropriate tool to in fact do that?

19 A. Well, first of all, I would not
20 qualify my previous statement to the effect that it has
21 to be used carefully.

22 Q. In the context of cost/benefit
23 analysis?

24 A. Or even in the context that you were
25 referring to because even in the context to which you

1 refer you should be interested in the effect of changes
2 in the level of output in an industry rather than
3 measures of the total number of jobs attributable
4 ability to the industry unless you are seriously
5 considering the alternative of wiping it out
6 completely.

7 So I think, first of all, you have to ask
8 yourself, what is the impact of a small change or --
9 first of all, you have to ask yourself, what is the
10 impact of a small change in the employment of the
11 industry and then it is fair enough to say that the
12 input/output model gives you -- the open input/output
13 model gives you a fair estimate of the immediate change
14 in the demand for labour in this industry and
15 associated industries.

16 It doesn't tell you anything about the
17 aggregate supply of labour. So it doesn't really tell
18 you how much employment there will be. All it does is
19 it tells you how much of the demand for employment is
20 going to change.

21 Closed input/output models, in my
22 opinion, are even more dangerous because they include
23 induced effects which would be present whether or not
24 this project was undertaken.

25 Q. Now, let's leave aside the situation

1 I think that you were describing about whether -- how
2 you should go about looking at alternatives.

3 Let's assume that you don't want to look
4 at alternatives, but what you want to do is you want to
5 record and convey to somebody the effect that one
6 sector of the economy has on other sectors. Would you
7 agree or disagree that input/output analysis is an
8 appropriate method of doing that?

9 A. Well, see, I don't think the question
10 is well posed when you say--

11 Q. Well, pose the question.

12 A. --well, what is the effect of an
13 industry on the economy. I think a better posed
14 question is, what is the effect of a change.

15 Q. All right. Let me change the
16 question. What is the significance of the forest
17 sector on the economy of the province?

18 A. You see, again one way of looking at
19 that question is to say what would the national income
20 of the province be if we didn't have the forest
21 industry.

22 If that's the question, then I think
23 cost/benefit analysis is the best way to go about it.
24 You see, otherwise if it is not that question, I am not
25 really quite sure what we mean.

1 Q. Does input/output analysis have no
2 role? Do you just dislike input/output analysis
3 completely or...

4 A. I think input/output analysis has a
5 useful role in tracing the immediate changes in the
6 demand for inputs occasioned by a change in the demand
7 for a particular output.

8 Q. Okay. Dr. Morrison, I think we are
9 at my third last question so don't get too excited.

10 You made a reference in Exhibit 1705,
11 overhead 3 -- if you would look at that for a minute.
12 Exhibit 1750, overhead 3.

13 DR. MORRISON: A. Okay.

14 Q. I think we are talking here about the
15 distribution of possible employment effects. I think
16 we were talking about it as a result of Forests for
17 Tomorrow's terms and conditions, were we, at that
18 stage?

19 A. That's right.

20 Q. One of the items you had was increase
21 for MNR and you also indicated other industries --
22 pardon me, other industries.

23 Did you cost or estimate the cost of
24 those increases for the other industries and MNR?

25 A. No, I did not.

1 Q. Mr. Lindgren, at page 24,759 - you
2 don't have this - of the evidence responded to the
3 former chair and said that he thought it would be
4 irresponsible not to attempt to cost terms and
5 conditions. He said:

6 I think that where options are brought
7 forward I think that some degree of cost
8 quantification should be attempted and
9 where possible -- well, should be
10 attempted.

11 Do you agree with that as a reasonable
12 proposition?

13 A. Given unlimited resources, certainly.

14 Q. Dr. Muller?

15 DR. MULLER: A. Yes, it's a reasonable
16 proposition.

17 Q. You weren't asked to do that; were
18 you?

19 A. I was not asked to do that.

20 Q. You were not asked to do that either?

21 DR. MORRISON: A. No.

22 Q. Thank you. Now, assuming that it is
23 impractical to adopt everyone's terms and conditions -
24 Mr. Benson said that there were so many that it boggles
25 the mind - does the Board have to do a net social

1 benefit analysis of the various suites and mixes of
2 terms and conditions to maximize net social benefit so
3 that their decision can be looked upon as a reasonable
4 one?

5 DR. MULLER: A. The Board will be doing
6 such an analysis when it makes its decision.

7 Q. Do they have to plug a whole bunch of
8 numbers and do a formal net social benefit analysis
9 such as you have outlined, or is that something which
10 will -- will that important decision be made perhaps
11 on -- well, personal judgment, subjective basis?

12 A. I can't speak for the Board on how
13 they will make their decision.

14 MR. MARTEL: Which portion of our stuff
15 will do it?

16 DR. MULLER: What I am saying is that
17 when the Board makes a decision, it will be making a
18 decision about the alternative approach, the approach
19 to forest management which in their opinion is best for
20 the province. And I think that it is fair enough to
21 say that they are thereby making a judgment about the
22 way in which they think net social benefit will be
23 maximized.

24 MR. FREIDIN: Q. I suggest they can do
25 that quite appropriately without doing a technical net

1 present value calculation as you have described?

2 DR. MULLER: A. Well, you see, I think
3 they can do it by saying that we ought to undertake
4 these analyses at the FMU level as part of a continuing
5 process of forest management.

6 Q. But in relation to the whole host of
7 other things?

8 There are a host of conflicting terms and
9 conditions, each of them having a cost, and you could
10 come up with thousands of mixes of all those, very
11 important decision dealing with the management of the
12 natural resources and are you suggesting that they have
13 to do a net social benefit analysis to make a
14 reasonable decision?

15 A. I'm not suggesting that they should
16 do a quantitative analysis of each proposal and each
17 combination of proposals.

18 MR. MARTEL: Some serious negotiations
19 would help.

20 MR. FREIDIN: I have enjoyed the last --
21 it has been actually exactly a day, gentlemen.

22 I was going to engage in a discussion
23 about the differences between mainstream economics and
24 what I would call mainstreet economics, but I think
25 maybe I have already done that and thank for very much

1 for your assistance.

2 MADAM CHAIR: Thank you, Mr. Freidin.

3 Ms. Swenarchuk?

4 MS. SWENARCHUK: I will be very brief,
5 Madam Chair.

6 REDIRECT EXAMINATION BY MS. SWENARCHUK:

7 Q. Just following on Mr. Freidin's final
8 point. To your knowledge, gentlemen, is it the
9 position of Forests for Tomorrow that the Board be
10 required to do a cost/benefit analysis of alternatives
11 in reaching its decision?

12 DR. MULLER: A. I am not aware of any
13 such requirement by FFT.

14 Q. Now, Dr. Morrison, you have been
15 qualified as a forest policy analyst and a forest
16 economic analyst and I just have one brief question
17 with regard to recycling.

18 Are policy changes such as recycling
19 requirements commonly considered by forest policy
20 analysts and forest economics analysts in studying the
21 industry?

22 DR. MORRISON: A. It is becoming
23 increasingly common and it is especially important when
24 analysing possible trade flows and the influence that
25 that could have on forest practices.

1 Q. With regard to recycling requirements
2 in the United States, to which you referred in your
3 evidence, have there been developments in that issue
4 since August and September of 1988?

5 A. No doubt. I haven't been following
6 the literature especially closely.

7 Q. All right. Now, this next question,
8 gentlemen, may take you a little time to answer and
9 feel free to take the time.

10 I only have two questions left, Madam
11 Chair.

12 With regard to this, there has been a
13 great deal of discussion in cross-examination with Mr.
14 Cosman and Mr. Freidin and the Board about cost/benefit
15 analysis using the value of the wood to the mill and
16 the implications were the value of wood to consider
17 such things as, to use Mr. Cosman's characterization,
18 from the public perspective one could consider the
19 value of better paying jobs, saving underutilization of
20 company infrastructure, maintaining jobs --

21 MR. COSMAN: Social.

22 MS. SWENARCHUK: Pardon me?

23 MR. COSMAN: Social infrastructure.

24 MS. SWENARCHUK: I have community
25 infrastructure.

1 Q. In any event, gentlemen, I would like
2 you to turn your minds to the type of costs that would
3 have to be factored into analysis if in fact one were
4 to approach cost/benefit analysis in this hearing from
5 the perspective of considering benefits and costs, the
6 downstream benefits and costs to use Mr. Freidin terms.

7 So if you would like to take a little
8 time, could you perhaps come up - I am asking only for
9 a very preliminary list - with some of the costs that
10 would then have to be factored into an analysis.

11 Madam Chair, I only have one more I think
12 rather brief question after this one. If the Doctors
13 would like ten minutes to consider it, I would ask you
14 to provide them with that.

15 Would that be helpful? We can still
16 finish by twelve noon I'm sure. Ten, fifteen minutes?

17 DR. MULLER: It's fine with me.

18 MADAM CHAIR: Do you require that, Dr.
19 Muller?

20 MS. SWENARCHUK: If you wish to confer as
21 well with Dr. Morrison.

22 DR. MORRISON: It might be helpful. We
23 could confer and find out if it would be helpful.

24 MS. SWENARCHUK: 15 minutes, Madam Chair.

25 MADAM CHAIR: Back at a quarter to

1 twelve.

2 MS. SWENARCHUK: Thank you.

3 ---Recess at 11:30 a.m.

4 ---On resuming at 11:45 a.m.

5 MADAM CHAIR: Please be seated.

6 MS. SWENARCHUK: Q. Go ahead, gentlemen.

7 DR. MORRISON: Q. Thank you.

8 Madam Chair, in the brief period we have
9 had to consult we have come to at least a preliminary
10 list, but I would like to preface our remarks by
11 pointing out that it seems to us that there has been a
12 rather imprecise bounding of what the undertaking is in
13 the sense of what industries are or are not to be
14 considered and point to, for example, Industry Panel 1
15 evidence which included comments about pollution in the
16 pulp and paper industry, but it is my understanding
17 that the pulp and paper industry was not being subject
18 to the environmental assessment process.

19 DR. MULLER: A. With that, I think,
20 useful preface I would like to introduce my comment by
21 being technical for just a moment.

22 The suggestion that there are benefits to
23 be gained downstream from the forestry industry; that
24 is, there are benefits to be gained from expanding the
25 forestry industry because pulp production will expand,

1 would in technical terms be an argument that there is a
2 distortion in the downstream market, and the distortion
3 in question would be that the marginal social benefit
4 of expanding pulp and paper production; that is, the
5 extra social benefit that we get from one more unit of
6 paper, exceeds the marginal social cost; that is, the
7 opportunity cost in terms of other things that we have
8 to give up in order to get that extra unit of pulp and
9 paper.

10 Now, what I want to do is summarize the
11 proposition that's being put to us through the
12 questioning in saying there is a distortion in
13 downstream markets which should be taken into account
14 in a cost/benefit analysis and which you have not taken
15 into account in your cost/benefit analysis.

16 The answer I want to give is that
17 cost/benefit manuals give us the advice that we should
18 consider all distortions in downstream markets or in
19 markets elsewhere in the economy that may be important.

20 So my answer to the question is, first of
21 all, that the distortion that is envisaged by the
22 question; namely, that the value of the pulp and paper
23 exceeds its marginal cost because labour is earning low
24 wage rates -- sorry. The proposition that is being put
25 to us, that there is an additional social benefit to be

1 gained in the pulp and paper industry by expanding its
2 output, has to be addressed in two ways.

3 One is, is the distortion exactly what is
4 implied by the question; and, secondly, have we taken
5 into account the other distortions in the economy which
6 would be consistent to take into account.

7 Q. Dr. Muller, I just want to stop you
8 right there. As a non-technical person, like the Board
9 members, could you help us by explaining why you have
10 used the word distortion and what in fact that means?

11 A. Well, yes, I am...

12 Q. Coming to that. Fine.

13 A. Coming to that.

14 The first thing I want to point out is
15 that when you are considering expansion of downstream
16 industries you have to consider external costs and the
17 most obvious ones are that pulp and paper mills cause
18 pollute both the air and the water and damage to a
19 greater or lesser extent tourism values and fishery
20 values and various other values that you might
21 consider. So you certainly should consider pollution
22 caused by downstream industries if you want to consider
23 benefits obtained from downstream industries.

24 Similarly, I think you should consider
25 health and safety costs. For example, if the

1 downstream industries are more dangerous than average
2 to work in, they will probably involve more than the
3 average amount of industrial accidents and that's a
4 factor that should be taken into account.

5 More generally, the proposition is that
6 there are benefits from expanding the downstream
7 industries which we should also count. We should also
8 remember that when we expand the forest strip and
9 expand the downstream industries we are also
10 contracting some other industries in the economy.

11 MADAM CHAIR: Excuse me, Dr. Muller.

12 Why is your assumption that we are
13 expanding the forest industry?

14 DR. MULLER: I'm sorry?

15 MADAM CHAIR: I thought the sort of
16 distortion we were talking about -- well, I don't know
17 what we have said, but the Board is thinking of a
18 distortion whereby you cut back on logging and,
19 therefore, you cut back on the production in mills.

20 DR. MULLER: I'm sorry. I find it
21 easiest to consider this kind of question in terms of
22 an expansion in the output of the forest industry; that
23 is, I find it easiest to consider moving from an
24 alternative which involves lower output of the industry
25 to an alternative which involves higher output, then I

1 talk about the benefits of the move and the costs of
2 that move.

3 I mean, the conclusions I reach from
4 going about it that way are going to be the same as the
5 conclusions I would reach by considering a reduction in
6 output of the industry.

7 The advantages that we are talking
8 about -- I mean, all of this analysis we are talking
9 about the value of wood or the benefit we get from wood
10 and, therefore, I find it most natural to consider the
11 benefit we would get from one more unit of wood.
12 That's, of course, what we give up if we reduce our
13 output of wood by one unit.

14 MR. MARTEL: Are you saying we also
15 constrain other opportunities in the area?

16 DR. MULLER: Well, I am saying, to a
17 first approximation the amount of labour available in
18 the Province of Ontario is fixed and when you use
19 labour in one industry, like the forest industry, you
20 are ipso facto removing it from some other industry.

21 MR. MARTEL: When you have 8 or 9 per
22 cent unemployment, what are you removing?

23 You would be removing some of the
24 unemployed from the unemployed roles hopefully to
25 useful productive occupations.

1 DR. MULLER: Well, the problem with that
2 analysis, Mr. Martel, is that it assumes that no other
3 factors are determining the level of unemployment.

4 I mean, effectively what I am telling you
5 is that the level of unemployment that we have now is
6 to a considerable extent determined by deliberate
7 public policy, just as it was in 1981 and '82; that is,
8 there was a deliberate public policy undertaken which
9 had the effect of reducing the rate of employment and
10 increasing the rate of unemployment in the country.

11 MR. MARTEL: But in northern Ontario --

12 DR. MULLER: Nothing we are going to do
13 is going to change that fact.

14 MR. MARTEL: But in northern Ontario,
15 which I know a little bit about, we have never had
16 adequate employment, I don't care where or when, to
17 meet the needs of just the people that are there, let
18 alone people moving north.

19 I mean, the fact that all of the kids
20 essentially have to leave northern Ontario to find
21 jobs because there are no jobs. That's not a new
22 phenomenon. I mean, that has been there since I was
23 that high and it is still occurring.

24 So I have difficulty with the economic
25 jargon, if I can be blunt, when I deal with in the real

1 world and all the kids nearly have to leave the north.
2 I am not sure what one talks about when one says:
3 Well, you know, you take the available employment
4 opportunities elsewhere or you consider those factors.
5 I mean, there are not enough jobs in the north, there
6 have never been. That's a given.

7 DR. MULLER: Well, Mr. Martel --

8 MR. MARTEL: I don't care what the
9 reasons are. That's just a given.

10 DR. MULLER: Mr. Martel, I can only say
11 that economists in considering these questions add a
12 few considerations which I am afraid you may feel are
13 cynical, but let me express this as bluntly as
14 possible.

15 There may be some level of unemployment
16 that people will tolerate in the north in return for
17 the benefits that they see of living there; that is to
18 say, we have a situation in which people are constantly
19 moving out of the north by their your own --

20 MR. MARTEL: For a reason.

21 DR. MULLER: Pardon?

22 MR. MARTEL: For a reason.

23 DR. MULLER: For a reason.

24 MR. MARTEL: There is no employment.

25 DR. MULLER: There is no employment,

1 that's correct.

2 MR. MARTEL: That's the main reason.

3 DR. MULLER: Now, suppose we increase
4 slightly the amount of employment.

5 MR. MARTEL: You would reduce the number
6 of people who would come south or go to the west.

7 DR. MULLER: And, therefore, you might
8 have the same level of unemployment.

9 MR. MARTEL: If you increase -- hopefully
10 the people who live there would get those jobs.

11 DR. MULLER: Yes, but the rate of
12 unemployment is the ratio of the number of people who
13 are employed and the number of people in the labour
14 force.

15 MS. SWENARCHUK: Q. Let me just try to
16 clarify this, Dr. Muller.

17 Can us assume if the forest industry, for
18 example, were to expand in northern Ontario, the people
19 who would get those jobs would be necessarily the ones
20 that are currently employed -- unemployed, excuse me?

21 DR. MULLER: A. Well, I don't think in
22 general you can identify -- I don't think that in
23 general you can say with certainly that when an
24 industry expands the people who get the jobs will be
25 the people who are unemployed. All you can say is that

1 more people are employed in that industry.

2 What I am trying to say is that if the
3 industry were to expand, it is probable that that would
4 reduce the rate at which people leave the north, and I
5 suspect that there would still be unemployed people in
6 the north.

7 So what I am saying is that an expansion
8 of the industry might increase both employment in the
9 north and the labour force in the north and,
10 consequently, the percentage of the labour force which
11 was employed might not change very much. That's a
12 principle that is -- at least that's an aspect of the
13 problem that economists like to address when they are
14 faced with questions of the kind that Mr. Martel has
15 just given me.

16 Q. Can I return to my original question
17 then which I realize was not phrased as accurately as
18 possible, partly because of the -- for the reasons that
19 you have already identified which is the flexibility
20 with which the question of what is a downstream
21 industry associated with forestry, as has been
22 discussed here.

23 But, in any event, can we get back to my
24 original question which was, if we are going to add to
25 the value of wood the benefits of those downstream

1 flows, what are the costs that would have to be
2 considered in the cost/benefit analysis, and you
3 referred to pollution and health and safety costs.

4 Then I think you are about to talk about
5 contracting other industries and perhaps you need to
6 explain that more fully to the Board.

7 DR. MULLER: A. Well, the point I was
8 going to try to make was that there are distortions of
9 the kind that I mentioned throughout the economy, and
10 when expanding -- and when you are considering a
11 project which will expand employment in the forest
12 industry, you are, as I said, automatically reducing
13 employment somewhere else in the economy and it may
14 easily be the case that the value of the labour that we
15 remove from that industry understates the social
16 benefit of the product of that particular industry.

17 All I can really say is that you are
18 getting into what is known as the problem of the second
19 best. It is a very complicated set of issues in
20 cost/benefit analysis and welfare analysis and the
21 upshot of it is that there are no simple answers and
22 that the moment you start considering -- the message I
23 think that is important for here is, the moment you
24 start including downstream benefits in one industry it
25 is incumbent upon you to consider the reduction in

1 benefits that you are talking about in other
2 industries.

3 Q. My last --

4 A. I'm sorry if I can't be more precise.

5 Q. My last question is with regard to
6 cost/benefit analysis in consideration of community
7 stability in evaluation of alternatives.

8 I wonder if you would please turn to page
9 75 of Forests for Tomorrow's terms and conditions.

10 MR. FREIDIN: What was the topic?

11 MS. SWENARCHUK: Community stability.

12 MR. FREIDIN: Thank you.

13 MS. SWENARCHUK: Q. Now, gentlemen, this
14 is one of the elements of the -- page 75, Madam Chair,
15 Mr. Martel.

16 This is one of the elements of the
17 changed planning process that FFT is proposing under
18 the integrated forest management plans approach, that
19 heading being on page 71.

20 Now, with regard to page 75, we see at
21 the top that subsection 6 has to do with the evaluation
22 of alternatives and I will just give you a moment, each
23 of you, to reread that section.

24 DR. MULLER: A. I have read them.

25 Q. All right. I guess I will direct the

1 question to you, Dr. Muller.

2 You will see that the evaluation of
3 alternatives is to consider three elements:
4 Environmental protection, resource use and community
5 stability and that community stability has been defined
6 in the section.

7 Now, is it your view that -- I have to
8 keep my lawyer friends happy about the way I phrase
9 these questions, so I will just think about it.

10 What is your opinion with regard to
11 whether the inclusion of community stability as one of
12 the three elements to consider in evaluating
13 alternatives, whether that inclusion as defined here
14 would assist in protecting community stability?

15 Maybe I can put it more bluntly.
16 Given that it is one of the three factors to consider
17 in evaluating alternatives, would this approach include
18 protection for community stability concerns?

19 A. I think this approach would recognize
20 the concern for community stability and would,
21 therefore, increase the importance that put on it.

22 MS. SWENARCHUK: Those are my questions.

23 Thank you very much, Ms. Swenarchuk.

24 Thank you very much, Dr. Muller and Dr.
25 Morrison. We appreciate your hard work and attendance

1 at the hearing. Thank you.

2 DR. MULLER: Thank you, Madam Chair.

3 May I just say that it has been a real
4 privilege for me to participate in these hearings. I
5 found them very informative.

6 MADAM CHAIR: Thank you. We will
7 reconvene at four o'clock today on the matter of
8 hearing submissions about planning for argument in
9 reply and we will recommence on Monday at 10:30 a.m.
10 with Panel 9.

11 ---Recess at 12:10 p.m.

12 ---On resuming at 4:00 p.m.

13 MADAM CHAIR: Please be seated.

14 Thank you very much for coming to this
15 session this afternoon and thank you for the written
16 responses we have to the Board's call for proposals on
17 how we are going to deal with reply evidence and
18 argument at this hearing.

19 Ms. Seaborn, has your proposal been
20 circulated among the parties?

21 MS. SEABORN: Yes, Madam Chair. It went
22 out yesterday afternoon and a draft of it was discussed
23 with some of the counsel who were at the hearing last
24 week, as well as Mr. Colborne and Mr. Hunber.

25 MADAM CHAIR: Have any of the parties

1 objected to what you are suggesting?

2 MS. SEABORN: I think there are some
3 twists on what we have suggested.

4 It is probably best for me to let Mr.
5 Cosman and Mr. Freidin speak to those areas.

6 I spoke with Mr. Colborne this afternoon
7 and he told me that I could tell the Board that in his
8 view our proposal was reasonable. I have not heard
9 from Mr. Hunter.

10 MADAM CHAIR: Thank you.

11 Mr. Freidin, has your proposal been
12 circulated to the parties?

13 MR. FREIDIN: Yes, but only recently.
14 However, there was a meeting of counsel last week, all
15 the major players, except for Mr. Colborne and Mr.
16 Hunter, where we discussed the matters which are
17 referred to in my statement there. There is
18 substantial agreement I believe amongst those counsel
19 in relation to much of what I have here.

20 There are one four areas where the
21 Ministry and I believe the Industry have some concern
22 regarding the proposal by the Ministry of the
23 Environment and I would like to obviously apprise you
24 of that, but I think other than that I think most
25 counsel are in agreement with what I propose. In fact,

1 some of the counsel are in agreement with some of the
2 areas where I differ with MOE.

3 MADAM CHAIR: Mr. Hanna, perhaps the way
4 we will proceed is to hear from the Ministry of the
5 Environment and Natural Resource and Mr. Cosman and
6 then you could comment on what they are proposing.

7 MR. HANNA: Thank you, Madam Chair.
8 Perhaps Ms. Swenarchuk may have something to comment
9 on.

10 MADAM CHAIR: Yes, excuse me, Ms.
11 Swenarchuk.

12 MS. SWENARCHUK: I will have to leave
13 soon after 4:30, so...

14 MADAM CHAIR: Would you like to address
15 the Board first or do you want to hear from --

16 MS. SWENARCHUK: Yes. I don't have a
17 great deal to say on the matter, quite frankly, Madam
18 Chair.

19 MADAM CHAIR: All right. Go ahead.

20 MS. SWENARCHUK: I fundamentally have no
21 argument with the Ministry of the Environment position
22 with the exception of the time for oral argument, and I
23 would suggest that approximately one day per full-time
24 party for oral argument would be appropriate. I don't
25 frankly think that three hours is sufficient. With the

1 exception of that, I think we are prepared to live with
2 whatever the Board suggests here.

3 I would say that the question of how long
4 other reply evidence will be of both the Ministry and
5 the Industry is very important to us in terms of
6 allocation of resources and fact that, as you will be
7 aware, parties are currently preparing submissions for
8 further intervenor funds.

9 It will also be our position, I will
10 state it now and I will be stating it again, that the
11 Industry right of reply is, as the Board stated
12 initially, a limited right of reply, and if we see
13 material being filed in reply by the Industry that we
14 consider is beyond the bounds of that definition of
15 limited by the reply, we will be objecting and perhaps
16 bring argument to the Board with regard to the
17 admissibility of extensive Industry reply evidence.

18 With those comments and, as I say, the
19 suggestion of three hours of oral argument in my view,
20 assessing the issues that I may wish to highlight for
21 you on behalf of my client, I would ask for up to about
22 a day to do that.

23 I guess the one last last comment is
24 again with regard to resources. We would certainly
25 appreciate the presentation of reply evidence and final

1 argument in Toronto as opposed to any location which
2 would require extensive costs for parties.

3 In fairness, Mr. Martel, if you want to
4 call this in Sudbury, I think we would all go, but I
5 really don't see any benefit, for example, in all of us
6 once again costing the public money to fly to Thunder
7 Bay when we are located here.

8 MR. MARTEL: I will save my comments
9 about the public and the travel since I have now been
10 travelling for three full years.

11 MS. SWENARCHUK: Which is why I
12 suggested, Mr. Martel, that we would all be happy to
13 accommodate you for once and go to Sudbury.

14 MR. MARTEL: Oh, you would be willing to
15 do that?

16 MS. SWENARCHUK: Yes.

17 MR. MARTEL: Well, thank you. I
18 appreciate that.

19 MS. SWENARCHUK: I don't see any benefit
20 to the public or to the case i all of us once again
21 flying the Bay Street bus to Thunder Bay every week.

22 MADAM CHAIR: Ms. Swenarchuk, is it too
23 early for you to have any sense to what extent you
24 would be cross-examining on reply evidence? Could the
25 Board expect that you would want to cross-examine

1 extensively?

2 MS. SWENARCHUK: That would depend
3 entirely on the content of the evidence filed, Madam
4 Chair. I am sorry I can't assist you beyond that.

5 I wouldn't want to leave you with the
6 impression that we in any way wish to abridge the right
7 of our clients to cross-examination on those issues.

8 MADAM CHAIR: Well, I guess an issue the
9 Board will consider is whether --well, assuming there
10 will be cross-examination of the reply evidence, the
11 Board will consider whether in fact it will set limits
12 on that cross-examination with respect to time.

13 We didn't do it as part of this hearing,
14 there were all kinds of reasons why it wasn't done, but
15 the Board considers this part of its process, the final
16 stage, to be quite different than the hearing so far
17 with respect to the procedures we might consider
18 following.

19 MS. SWENARCHUK: All I can say, Madam
20 Chair, is that we would certainly attempt to make any
21 cross-examination as expeditious as possible.

22 MADAM CHAIR: Thank you.

23 MR. HANNA: Madam Chair, while we are on
24 that subject if I could just mention something to the
25 Board.

1 My client would certainly be willing to
2 cooperate with the Board in any way possible to limit
3 the length of cross-examination provided that it was
4 reciprocal in terms of the length of the reply evidence
5 itself. There has to be some balancing there in terms
6 of the amount of reply evidence, but certainly my
7 client will do whatever is possible to make that stage
8 as succinct as possible.

9 MADAM CHAIR: Thank you, Mr. Hanna.

10 Ms. Seaborn?

11 MR. FREIDIN: Madam Chair, if I might. I
12 know you suggested that you might want to hear from the
13 Ministry of the Environment first.

14 I am wondering whether you would consider
15 allowing me to go first seeing it is the proponent
16 that's going to have to deal with reply evidence.

17 Also, I have a time constraint. I hope
18 Ms. Murphy will be here to relieve me so I can get out
19 of here by five o'clock.

20 MADAM CHAIR: Any objections, Ms.
21 Seaborn?

22 MS. SEABORN: No, that's fine. I would
23 be delighted to hear from Mr. Freidin.

24 MR. FREIDIN: I am going to use the
25 podium which is unusual for me.

1 Madam Chair, if you had an opportunity to
2 look at the proposal by the Ministry of Natural
3 Resources you will see that it in fact deals with a
4 number of items which are not dealt with in the
5 suggestion of the Ministry of the Environment.

6 It deals with, as you will see in terms
7 of reply, the timeframe for reply evidence, but also
8 scoping of reply evidence and some other issues.

9 Let me just indicate that the first area
10 in terms of reply evidence where there is a difference
11 of opinion between the Ministry of the Environment and
12 the Ministry of Natural Resources is in relation to
13 Item No. 2 of our proposal, timeframe for filing. 2(a)
14 of the Ministry's proposal states that reply witness
15 statements or affidavits will be filed upon the
16 commencement of MOE's oral evidence.

17 You will note, if you look at the second
18 paragraph of the Ministry of the Environment's
19 proposal, that they are suggesting that the Ministry of
20 Natural Resources file an initial reply evidence in
21 writing on December the 28th of this year and that
22 sometimes after that, with leave of the Board, file a
23 further written reply. The reason that the Ministry of
24 Natural Resources is suggesting the later date is
25 that --

1 MADAM CHAIR: Excuse me, one moment. Can
2 you remind the Board when we have tentatively scheduled
3 MOE's case to begin?

4 MR. FREIDIN: To begin? I don't know
5 when it is to begin.

6 MS. SEABORN: It is tentatively scheduled
7 to follow NOTOA's evidence and proceed before the
8 remaining satellite hearings that are still to be
9 arranged in New Lisgard, Ottawa, North Bay and Toronto.

10 MADAM CHAIR: So we are talking about the
11 winter of --

12 MR. PASCOE: I would say approximately
13 April of '92.

14 MADAM CHAIR: April of '92.

15 MS. SEABORN: We are hopeful it will be
16 earlier than that.

17 MR. FREIDIN: The reason that the
18 Ministry is proposing a date later than December the
19 28th is that December 28th, '91 which MOE is suggesting
20 is the date on which they have to file -- is 60 days
21 after they have to file their written evidence.

22 As you will appreciate, the reply
23 evidence of the Ministry of Natural Resources is going
24 to be in response to the evidence -- all the evidence
25 and if we filed reply evidence on December the 28th we

1 would be in the middle of the OFAH case, so we wouldn't
2 be able to reply to all of the evidence that they were
3 going to lead and we would not have, of course, from
4 NOTOA.

5 The primary concern is in relation to
6 OFAH. We anticipate that some of the matters that we
7 might have to call reply evidence on will be matters
8 which are of concern to OFAH and which we undoubtedly
9 hear about in their evidence, you know, HSA, GIS and a
10 number of things.

11 The extent to which we would have to
12 actually call reply evidence and, therefore, the extent
13 to which we might have to file written reply evidence
14 will be affected by what happens during the
15 cross-examination of OFAH on their case.

16 I don't want to be put in the position of
17 preparing a bunch of written reply evidence that we
18 might have to lead on GIS and HSA and a number of other
19 habitat supply analysis, a bunch of things that OFAH
20 wants to deal with, just to find out three or four
21 months later that I cross-examined and there is no need
22 to have any written reply evidence.

23 My concern about having to put in that
24 position is that there is enough to do in this hearing
25 without having the Ministry of Natural Resources having

1 to spend its time and effort preparing written reply
2 evidence just to find out that all of that was for not.

3 An additional thing that I would ask the
4 Board to keep in mind in this regard, it is the
5 intention of the Ministry of Natural Resources to,
6 wherever possible, as much as possible, rely solely on
7 written reply evidence.

8 You will see that in the suggestion put
9 forward by the Ministry that somewhere before we
10 actually get into leading reply evidence we have a
11 proposal whereby the Board and the parties would
12 indicate to the Ministry of Natural Resources those
13 items of written reply evidence that they want to
14 cross-examine on. We are hopeful that the amount of
15 that written reply evidence they want to cross-examine
16 on will be minimal, but that of course will depend on
17 how they view the reply evidence itself.

18 For the Ministry of Natural Resources in
19 an attempt to get as much of this reply evidence in in
20 writing alone without any oral cross-examination, that
21 written reply evidence is going to have to be clear and
22 it is going to have to be complete.

23 So it is the intention of the Ministry of
24 Natural Resources when we file our written reply
25 evidence that it, in fact, meets those two criteria.

1 That means it is going to be a lot of effort on behalf
2 of the Ministry of Natural Resources to do that and it
3 is for that reason - because we want to put that kind
4 of effort into that - that I don't want to be put into
5 the position of having spent all of that time and all
6 of that effort, file material on December 28th just to
7 find out that through my cross-examination or other
8 people's cross-examination it is not necessary to lead
9 all that reply evidence.

10 As I said, there is enough to do from my
11 perspective without spending a lot of time and effort
12 on my behalf and on behalf of my client preparing
13 detailed reply evidence for no reason at all.

14 So that's the reason that we are
15 suggesting a later date for filing.

16 Now, the date that we have suggested for
17 filing our written reply evidence, as you will see from
18 Item 2, falls on two dates. One is the commencement of
19 MOE's oral evidence, at which time we would deal with
20 reply arising out of everyone's case up to this point
21 in time, and then under 2(b) we would supplement that
22 within ten days of all parties leading their evidence
23 as to anything new that came up.

24 Now, I had a discussion with my friend
25 from the Ministry of the Environment as to whether that

1 date could be changed a little bit and I can advise,
2 Madam Chair, I am willing to move that back to
3 somewhere very early in NOTOA's case if the Board wants
4 that date to be a little earlier.

5 Let me just indicate to you why I think
6 the date -- well, let me go back. There is an
7 importance about filing too early. There is also a
8 concern from the Ministry's point of view and I think
9 from the Board's point of view about filing too late.
10 If it is the intention of the Board, if you accept our
11 proposal, and to have in fact have the Board and the
12 other parties tell the Ministry: We want you to call
13 evidence or have these witnesses here for
14 cross-examination on issues A, B and Z, we obviously,
15 as the person to lead that evidence, want to know about
16 that within a timeframe where we think that we can get
17 those witnesses ready to come here and be helpful to
18 you.

19 We think that it is in fact -- if we file
20 our written reply evidence either at the commencement
21 of MOE's oral evidence or perhaps a couple weeks
22 earlier, that that would give the Board and other
23 parties sufficient time to review it and either during
24 MOE's case or during the hearings tell MNR: Look,
25 bring Osborn back, we want to cross-examine him on that

1 and that sort of thing.

2 So I think the date that we are
3 suggesting is reasonable in terms of not causing the
4 MNR to spin its wheels and waste its time for the
5 reasons I have indicated. I think the date we
6 suggested is also earlier enough for our proposal to
7 allow parties to review this material and indicate to
8 the Ministry what it is they want to hear oral evidence
9 on.

10 MADAM CHAIR: Excuse me, Mr. Freidin.
11 Did you just say that you have changed it; instead of
12 filing at the beginning of MOE's evidence, you would do
13 it at the beginning of NOTOA's case?

14 MR. FREIDIN: Give or take a week. I
15 think I might want about a week into NOTOA's case so
16 that I can try to get a full reply to OFAH's case.

17 I am just saying if the Board -- I am
18 willing to move it back. Maybe I am reducing things by
19 saying that.

20 MR. MARTEL: I guess I am having
21 difficulty. Here you are saying you want and you have
22 been arguing you want to hear everybody's material
23 except MOE's so you don't spin your wheels, but then
24 you saying: I am prepared to move back to --

25 MR. FREIDIN: A couple weeks.

1 MR. MARTEL: Well, it depends on how long
2 NOTOA is going to take, but then you would be spinning
3 your wheels on NOTOA's information, too won't you?

4 MR. FREIDIN: Mr. Martel, I am only
5 throwing that out in case anybody has a concern about
6 it being too late.

7 I would prefer to file it when I
8 suggested at the beginning of MOE's case. I would, to
9 be quite frank, prefer to file after MOE's case, that's
10 normally what you do, but in the interest of not having
11 to ask for a delay between the end of MOE's evidence
12 and the time that we file this evidence, in order to
13 keep this thing going I am willing to do the unusual
14 and say we will file written reply evidence before all
15 the parties have led their evidence.

16 So I will stick with my original
17 proposition. At the commencement of MOE's oral
18 evidence is when I want to do it and I am saying I
19 won't object if you push me back a couple of weeks.

20 MR. MARTEL: Convinced easily; weren't
21 you?

22 MADAM CHAIR: So you have agreed to the
23 December 28th deadline, Mr. Freidin?

24 MR. FREIDIN: No way. Absolutely not.

25 MR. FREIDIN: Now, the next area that

1 there is a difference -- well, before we do that let me
2 tell you where there is no difference, as I understand
3 it, and that is on item No. 4 in relation to reply
4 evidence.

5 Madam Chair, I am sure that you are
6 concerned about the estimated time for reply evidence.
7 You raised that matter, if you recall, one day when Ms.
8 Cronk was here and she indicated basically, I think,
9 what I have set forth in the first paragraph on Item
10 No. 4 and that was, in a hearing that took
11 approximately 200 days there was 10 weeks of reply
12 evidence.

13 As I suggested or stated here, this
14 hearing is going to go on obviously for a greater
15 number of days than 200, but notwithstanding that the
16 Ministry of Natural Resources is hopeful that if it
17 does a credible job of filing written reply evidence,
18 and it is our intention to do that, that again
19 dependent on what the parties say about how much they
20 want to cross-examine, we are hopeful, perhaps
21 over-optimistic but hopeful that we can in fact put in
22 our reply evidence in 10 weeks.

23 We can do in 10 weeks for what I would
24 say is going to be a 400-day hearing what Halton people
25 did for a 200-day hearing. So I can't give you a

1 specific time. That's the sort of timeframe that we
2 are looking at. That's as helpful as I can be in that
3 regard at the moment. We, of course, would be asking
4 the Board for leave or sufficient time to put in reply
5 evidence, proper reply evidence.

6 No. 5, scoping of reply evidence. I
7 think I have covered that in my earlier submissions.
8 We want the Board to assist us in telling us the things
9 that they would like to hear about in reply evidence
10 and we suggest some time late in 1991 for that.

11 We would also want to have some sort of a
12 scoping session, as we referred to 5(b), where the
13 parties can say what it is they want to hear about in
14 terms of oral and who they want here for
15 cross-examination or what issue they want people here
16 for for cross-examination.

17 I should indicate, Madam Chair, that
18 there will be evidence that we don't believe can
19 properly be dealt with through written reply alone. We
20 are going to try to minimize those, but we do have
21 intentions to in fact call some evidence of our own in
22 oral reply. It will be supplemented, of course, with
23 the written material, but I think there are some areas
24 which we will not be able to avoid dealing with in that
25 way.

1 Location of reply evidence. I will go to
2 Thunder Bay, I will go to Sudbury, I will go to Sioux
3 Lookout, I don't care.

4 MR. MARTEL: Sudbury would be fine.

5 MR. FREIDIN: Now, argument. I think
6 there is argument between all the parties that written
7 an oral argument is advisable.

8 Madam Chair, if there is -- if counsel
9 have been obtuse and have been sometimes confusing from
10 our perspective as to what we are up to, it is in
11 argument that we have an obligation both to the Board
12 and to our client to make everything that's gone on up
13 to the time of argument clear.

14 It is there where we really, if we do our
15 jobs properly, make the Board's job easier. It is
16 there where we will outline what we think the relevant
17 evidence is on all the important issues, issue which
18 you will identify hopefully for us, as well as the
19 issues we want to deal with in addition. It is there
20 where we will summarize the evidence of the parties on
21 that. We will indicate to you why we think our
22 prospective clients -- our imminent client's position
23 should be accepted and if we do a good job of that in
24 writing and have an opportunity to expand where
25 necessary orally we will, I assure you, be assisting

1 you in your job.

2 It is not uncommon for a judge to write a
3 judgment and you pick it up and you read it and you
4 say: Oh, my God, it looks just like my argument and it
5 is set up just like that. Here is the issues, here is
6 what the parties said and here is the rationale for the
7 various parties, highlight this one, this is the reason
8 and it came right out your argument.

9 Now, to the extent that we can do that
10 for you we are making your job easier. I guess what I
11 am saying is that I think it is important from the
12 Board's perspective and from all the parties'
13 perspectives that we be given the opportunity to make
14 your job easier.

15 In that regard, let me just address the
16 issue where we differ from the Ministry of the
17 Environment, another area, and that is, if you look at
18 Item 8 of the Ministry of the Environment's submission
19 or proposal they are saying three hours for oral
20 argument.

21 With a hearing that may go 400 days, for
22 a hearing which would have gone on for perhaps four
23 years --

24 MR. MARTEL: Longer than World War II.

25 MR. FREIDIN: Longer than World War II.

1 I can't imagine, with the greatest of respect for my
2 friends from the Ministry of the Environment, I can't
3 imagine how they can seriously stand up in front of you
4 and suggest that counsel should be limited to three
5 hours.

6 It is the intention of the Ministry of
7 Natural Resources to put in a complete written
8 argument. I have done it many times in the past and I
9 know how to do it and I will do it in relation to this
10 Board, and I can't imagine how I can get up in any
11 serious way and highlight the important things in an
12 argument of the length that you will receive and deal
13 with it in less than two days.

14 It is with some trepidation that I
15 suggest that I can do a good job in two days, but I am
16 suggesting that that be a benchmark that the Board ask
17 counsel to adhere to, and I can assure you that I will
18 do as much as possible to stay within that two days.
19 What that is going to require is that our written
20 argument even be that much better than it might
21 otherwise be, that we put in writing for you all the
22 things that I say we hope will be of assistance to you.

23 So anything less than two days, in my
24 submission, is absolutely -- it is just unfair, it is
25 unreasonable given the context of the particular

1 hearing that we are dealing with.

2 Another area where there -- there may not
3 even be a difference, it may just be that I haven't had
4 a good enough opportunity to speak to my friends. Item
5 No. 3 of the Ministry of the Environment's proposal and
6 Item 2 of the Ministry of Natural Resources' proposal
7 differs to some extent.

8 You will see, if you start with the
9 Ministry of Natural Resources Item No. 2 in relation to
10 argument, that we believe that argument would be
11 assisted if at some time in the spring of 1992 the
12 Board indicated whether there are any specific topics
13 or issues it wished to have addressed in written
14 argument.

15 At the meeting of counsel last week, we
16 all agreed that obviously we are going to sit down
17 together and determine what are the issues which we can
18 all agree on should be dealt with, both from a
19 substantive point of view and from a legal point of
20 view. We will address all of those.

21 We are going to be asking for some
22 direction, some assistance as to what substantive
23 issues you want to make absolutely sure we address and
24 what legal issues are causing you difficulty. I am not
25 sure whether you have a lined piece of paper for that

1 or not, but there are those.

2 When you do that we will address all
3 those. The concern I have about the submission by MOE
4 is the wording. It says that:

5 "Parties will prepare their argument in
6 accordance with the issues list."

7 This is in the third line.

8 "If an outline of issues that is
9 acceptable to the Board cannot be agreed
10 to by the parties, the Board will issue
11 an order confirming the issues list and
12 require that all written argument be
13 organized in accordance with the order."

14 I don't think that's necessary with
15 respect, Madam Chair. I think what is required is at a
16 scoping session or at some session, as contemplated by
17 No. 2 of the Ministry of Natural Resources' proposal,
18 that you tell the parties what it is you want to hear
19 about. We will all make our own little list. If some
20 party doesn't want to deal with the issues which are of
21 importance to the Board, let them do so at their peril.

22 The MOE's suggestion says all written
23 argument be organized in accordance with the order.

24 Madam Chair, I have some sense as to how I feel I
25 should organize my argument or I will have a better

1 sense of how I wish to organize my written argument so
2 that, firstly, it addresses the issues of concern to
3 the Board, so it addresses the other issues which the
4 Ministry of Natural Resources views are important.

5 I ask the Board for the flexibility to
6 organize my argument, to deal with the issues which are
7 of importance, including the ones identified by the
8 Board, in the way I feel I can best convey or provide
9 you with the information which I say will be helpful to
10 you.

11 I somewhat feel they think I am foolish,
12 but I somewhat look forward to the opportunity to do
13 that, but I ask the Board to allow my client or allow
14 me to do that in the way that I feel that I can be most
15 helpful to the Board because because that is going to
16 be the sole -- that's going to be the most important
17 thing driving me in terms of how I organize my evidence
18 or my written argument.

19 That is what counsel are supposed to do,
20 that is what I have been doing for 18 years. Please
21 allow me to in fact put that argument together in the
22 way that I believe it will be most helpful to the
23 Board.

24 Item No. 3 of the Ministry of Natural
25 Resources, timeframe for filing written argument. It

1 looks like everyone agrees with the timeframe, that we
2 will file written argument six weeks after the end of
3 the written reply evidence, that intervenors would file
4 their written argument six weeks -- those timeframes
5 are agreed to, so unless you have any questions I won't
6 comment.

7 There is another place where there is a
8 difference. Item No. 7 of the Ministry of the
9 Environment proposal suggests that oral argument should
10 commence one to two weeks after MNR files its argument
11 in reply. Item No. 7 of the Ministry of the
12 Environment.

13 You will note that the Ministry of
14 Natural Resources have indicated in the last paragraph
15 of their proposal on page 3 that the hearing of oral
16 submissions would commence approximately four weeks
17 after filing of MNR reply argument.

18 Reply argument? Reply argument, correct.

19 I am suggesting that that lengthier
20 period of time will be required to properly -- well,
21 actually, to be quite honest with you, I can't recall
22 the rationale, Madam Chair, right now as to why we
23 wanted longer, why we have a problem with that.

24 MR. MARTEL: It doesn't sound very
25 important then.

1 MR. FREIDIN: No, no, it is all
2 important. It has been a long day.

3 I am just wondering. Do we have a
4 scoping session -- I can't remember whether we had a
5 scoping proposal after that or not.

6 Yes. In oral argument, in the second
7 paragraph, paragraph 4 of MNR says:

8 "We suggest that the Board advise the
9 parties of the matters of particular
10 interest to them that they wish to ensure
11 are addressed in the oral argument.

12 This could take place about two weeks
13 after MNR's argument has been filed."

14 So you will get reply argument and you
15 have to remember, Madam Chair and Mr. Martel, that the
16 Ministry of Natural Resources is going to receive
17 written argument from a whole bunch of people, and we
18 are then going to respond to that in writing.

19 You are going to have to take some time
20 to see what we have said so that when you tell the
21 Ministry and you tell the other parties: Now that we
22 have seen everything we want you to make sure you
23 address these sorts of things in oral argument, you
24 better have some time to look at the Ministry of
25 Natural Resources' written reply before you tell us

1 that and I would want a period of time after you tell
2 us that to actually start our oral argument.

3 So what I am saying is two weeks for you
4 to review the written reply and at the end of two weeks
5 tell us what you want to hear and give us two weeks to
6 react, get our act together and make sure we can put it
7 together in a way that it will flow.

8 I think it is going to be a very
9 interesting exercise, Madam Chair, to see the number of
10 issues that the Board wishes us to deal with in oral.
11 It may depend on how well the written material will be
12 and it may be that you will want so much dealt with in
13 oral that it will be difficult, if not be impossible,
14 to deal with in two ways, but we will deal with that
15 when we get to it.

16 MR. MARTEL: Just think if you good
17 negotiations what that would do for us.

18 MR. FREIDIN: Well, I am not too sure
19 whether it would change a lot of the suggestions that I
20 have made.

21 I think those are my submissions. I know
22 it is pretty early on in the hearings, Madam Chair, but
23 I look forward to the opportunity to stand up here and
24 look you both in the eye and answer your questions and
25 to explain to you orally what it is that the Ministry

1 of Natural Resources thinks about all of this evidence.

2 That's one of the reasons, like I say,
3 two days is just not enough for some of the issues that
4 I want to say. I want to look you in the eye and I
5 want to tell you where we are coming from. There are
6 lots of things that I can't do -- I can't do all of
7 that in written form. I think it would make a lot more
8 sense to you and it gives me an opportunity to be more
9 convincing in some respects if I am able to do it that
10 way. So I have sent a benchmark of two days. We will
11 try to deal with it in that time.

12 I hope once we get into that you will
13 find that it is a useful process. If there is any time
14 in this hearing where it is useful to spend,
15 particularly from your point of view, it is argument
16 and that includes oral argument. I think you have my
17 submission.

18 I haven't commented on the submissions by
19 Industry, only because I didn't have an opportunity to
20 look at them.

21 MR. COSMAN: Neither has the Board yet.

22 MADAM CHAIR: We haven't seen anything
23 yet.

24 MR. FREIDIN: I see that Ms. Murphy is
25 not here, but if I do have to leave, Madam Chair, I

1 apologize and I hope you will understand. Thank you
2 very much for your patience.

3 MADAM CHAIR: Thank you, Mr. Freidin.

4 Mr. Cosman, would you like to address the
5 Board?

6 MR. COSMAN: Certainly, Madam Chair.

7 Like other counsel, I had the benefit of
8 seeing Ms. Seaborn's creative initiative in putting
9 together a suggested format for the end of day and how
10 we should be proceeding both in terms of reply and
11 argument and I think, notwithstanding all that you are
12 hearing today, essentially the parties agree with the
13 proposal that is made and it is only in a few small
14 aspects some decision will have to be made by you.

15 Since our comments as counsel to Ms.
16 Seaborn were made on the basis of her draft, after -- I
17 am sorry, she has not had an opportunity to implement
18 those or change her draft as a result of them. We put
19 together just a short submission which covers a number
20 of those points and I will file those with you and I
21 have given copies to my friends, but I will take you
22 through it today.

23 MADAM CHAIR: Thank you, Mr. Cosman.

24 MR. COSMAN: I will start in reverse
25 order. What I did was, part 1 is reply evidence and

1 part 2 on page 2 is -- actually that should be final
2 argument. It says reply evidence, that should be final
3 argument at the top.

4 In terms of the form of final argument,
5 we agree in view of the length of the hearing, the
6 complexities of issues that parties should be required
7 to file written argument with the Board.

8 In terms of a structured way of doing it,
9 you have been given different proposals and we are
10 agreeable with living with whatever format you decide
11 is appropriate as to how the parties should structure
12 it.

13 I think Mr. Freidin's point is that no
14 parties should be limited by what you say, but I think
15 it is very valid and helpful if you have a road plan so
16 that you can compare what Cosman has said in paragraph
17 4 with what Swenarchuk has said in paragraph 4 which
18 has to do with roads, for example. So I think having a
19 formatted organization would be very helpful to you at
20 the end of the day.

21 With respect to oral argument. Again,
22 oral argument, and I quite agree with Mr. Freidin, is
23 for your assistance. At the end of a hearing of this
24 length, it will be designed by the parties to use a
25 very short period of time and you will see that we are

1 submitting that a maximum of two days would be
2 appropriate.

3 Within those two days, for example, on
4 behalf of Industry, Ms. Cronk, Mr. Cassidy and I,
5 handling the different areas of our own argument, will
6 be suggesting to you what is critical and important to
7 Industry and you will have to weigh that with what
8 other parties have said, but I think we can do it in
9 two days. It will be very tight to do it in two days.

10 As you know, there have been procedural
11 and legal arguments that have lasted a day, let alone
12 argument at the end of day that tries to summarize four
13 years of evidence for you and to try and tie and focus
14 the key issues.

15 The way I think we can accomplish it in
16 two days is set out in Part 2 which deals with the
17 schedule for the filing of argument. Now, we adopt the
18 schedule suggested by Ms. Seaborn from the Ministry of
19 the Environment with one variation. Perhaps if you
20 could go to her schedule, you will see that in
21 paragraph 4 at the top of page 2, it says:

22 "Within six weeks at the end of the case
23 in reply MNR would file its written
24 argument."

25 Then the five intervenors would then have

1 six weeks to file their argument and then you have four
2 weeks later MNR would file its argument in reply.

3 My suggestion is that in order to shorten
4 oral argument that six should be changed, and if you
5 come back to my submission, what I am suggesting is
6 that any party who wishes to should be entitled to file
7 a further submission. For example, I will be filing at
8 the same time as Ms. Swenarchuk our argument as per No.
9 5, but under Ms. Seaborn's proposal, the only time that
10 I would have to comment on her argument and final terms
11 and conditions in relation thereto would be in oral
12 submission.

13 So what I am suggesting is that four
14 weeks after the parties file their final argument with
15 the Board that the parties have a right to comment in
16 writing, if they wish, on what the other parties have
17 said.

18 So I can tell you that what I would
19 propose to do is to -- so you would see it rather than
20 have to deal with it totally in oral argument, which I
21 can never do in two days, I have to deal with how we
22 differ from the Anglers and Hunters, NOTOA, MNR, MOE
23 and Forests for Tomorrow and the native groups, and I
24 would suggest that Ms. Swenarchuk or other parties
25 would equally want to comment on may choose to comment

1 on the submissions that I have filed on behalf of
2 Industry.

3 So to have that opportunity under 6
4 really, to vary that to 4 weeks later all parties who
5 wish to file argument in reply would have the
6 opportunity to do so, I think would shorten the oral
7 portion of the hearing and would permit it to be
8 completed in the two days as suggested.

9 It is not obligatory to anybody, but I
10 think it would helpful to the Board if, for example, I
11 were to give you my submissions with respect to the key
12 components of the other parties' submissions to you,
13 otherwise we are all going to be passing like ships in
14 the night and then try to have to organize it orally
15 when we get together with you.

16 By the way, Ms. Seaborn tells me on
17 behalf of the Ministry of the Environment she is
18 agreeable to that. I have not had a chance to canvass
19 that with the other parties. That's all I wish to say
20 in terms of the final argument aspect, but I can tell
21 you that we will be limiting our oral argument to the
22 critical issues only. I believe we can do it in two
23 days and I believe we can do it in two days if we are
24 given the opportunity to file something in writing so
25 you will have the benefit of having our comments on the

1 other parties' submissions before we make oral
2 argument.

3 Now I will come back to reply evidence.
4 First of all, Ms. Swenarchuk started her submission by
5 outlining to you that we have a limited right of reply,
6 and I want to say there is no issue about that. We
7 fully recognize that we do not have a full right of
8 reply as the proponent does. Your right of reply is as
9 specified by the Board in its decisions and rulings and
10 we will abide by that. There is no question about
11 that. We accept that we do have a limited right of
12 reply.

13 In terms of the nature of reply evidence
14 and the timeframe for reply evidence, we have a real
15 problem with what is suggested. First of all, you have
16 to remember what reply evidence is. I have summarized
17 it from the case law in the beginning of Part 1 on
18 reply evidence:

19 "The right of reply is the right of a
20 party to adduce rebuttable evidence, to
21 contradict or qualify new facts or issues
22 raised in opposition to that party's
23 case."

24 So that's what we are doing. It is not a
25 question of having a second shot at it. We are

1 responding to factual matters raised in the cases in
2 opposition to us, and Mr. Freidin referred to his 18
3 years and I can say with respect to my 18 years I have
4 never known of a case where a party has been obliged to
5 file its reply evidence halfway through the opponent's
6 case.

7 The decision to file reply evidence and
8 what to file is made at the case of the case opposite
9 you. There is many reasons for that. Some things that
10 loom large in importance early in the case become less
11 important and, therefore, you decide you are not going
12 to call reply after all. Some things that you would
13 otherwise feel you have a need to file reply evidence
14 on you might not because you can obtain an admission or
15 evidence from another witness that renders it
16 unnecessary and I think that's the example that Mr.
17 Freidin gave about having to call on his behalf reply
18 evidence with respect to GIS. It may be that a very
19 good witness for OFAH or NOTOA or someone else or the
20 MOE will give evidence which renders the necessity of
21 filing reply -- renders it unnecessary to file reply on
22 that particular point.

23 The problem with the suggestion of the
24 December 31st deadline is, on my calculation we will be
25 halfway through the Ontario Federation of Anglers &

1 Hunters case, we will not have heard NOTOA, we will not
2 have heard the Ministry of the Environment. If I was
3 the Minister of the Environment I would love to have
4 the reply evidence in advance of putting in my own case
5 in-chief in oral evidence, and I am not suggesting
6 there is anything insidious about that, it would be a
7 tremendous advantage.

8 So what I have suggested is what is in
9 accord with the practice before boards and tribunals
10 and it has been my experience in the last 18 years and
11 that is, at the end of the parties opposite the case we
12 have a period of time within which to decide what, if
13 any, reply is filed and file it, just to be filed and
14 file it.

15 What I have suggested, you will see in
16 Item 2, is that we would submit -- it would be
17 appropriate to have written reply evidence within 10
18 days after all parties have led their oral evidence.

19 Now, if Mr. Freidin wants to or is
20 prepared to file his evidence earlier, that of course
21 is his right, but I would like to (a) hear all the
22 evidence before I decide what I should be responding to
23 and whether I need to respond; (b), I don't want to be
24 in a position of having to go through the exercise
25 twice.

1 I am not a public authority. Believe it
2 or not, Industry is hurting, as you may have read in
3 the newspapers, and to have to go through one exercise
4 giving reply halfway through the case and then try to
5 figure out at the end of the day what further reply
6 evidence I now have to file in respect of the balance
7 of the evidence of the Anglers and Hunters, the balance
8 of the NOTOA evidence and the MOE evidence I think
9 would be unfair.

10 So I am suggesting that to the extent
11 that I have a limited right of reply, that I should be
12 obliged to file my evidence within ten days after the
13 completion of the evidence of the parties opposing the
14 undertaking in this case.

15 I believe those are my submissions. All
16 I will say is that we will undertake to limit the
17 amount of reply evidence that we will call. We only
18 call that which is necessary and I will not take your
19 time, Madam Chair, to read what I have suggested, but
20 you will see some variations on my suggestions in
21 paragraph 1 and in the balance of the written
22 submission filed.

23 Thank you very much. Just by the way, I
24 have canvassed my colleagues in terms of the amount of
25 reply to date that we think we have which, as I say,

1 might change tomorrow if evidence is called through
2 another witness, but at the very maximum to date we
3 would have a week of reply evidence. To the extent
4 that we can file this in writing, which we would
5 propose to do, it may be that in terms of hearing time
6 and oral evidence it may even be shorter. The problem
7 is, I don't know what is going to happen next week or
8 the week after and the balance of the case ahead of us.

9 Thank you.

10 MADAM CHAIR: Thank you, Mr. Cosman.

11 Ms. Seaborn?

12 MS. SEABORN: I don't know whether Mr.
13 Hanna has any submissions he wants to make. Maybe it
14 would be better if he goes ahead.

15 MADAM CHAIR: Mr. Hanna, did you have
16 anything you wanted to say at this point?

17 MR. HANNA: It is fine, Madam Chair,
18 whichever is convenient for you. I am happy to go
19 ahead at this point.

20 Perhaps the most succinct way to state my
21 position is to say that we agree to a large extent with
22 Mr. Freidin's submissions.

23 I have just received Mr. Cosman's
24 proposal in terms of the scheduling of final argument.
25 The concern of my client had been the matter that he

1 raised in terms of reply to other parties' cases. I
2 expect in this case it is going to be somewhat
3 different than others cases that I have at least been
4 involved where there is a very clear line between the
5 proponent and the parties in opposition. I think there
6 are a number of cases, in fact, that could be brought
7 before you in terms of planning processes and there may
8 be need for discussion by each party of other parties'
9 proposals in addition to the proponent per se.

10 So in that respect I would support the
11 proposition that Mr. Cosman has brought forward, that
12 there be an opportunity after the Ministry has
13 submitted its argument in writing, the other parties
14 have submitted their argument in writing that there be
15 an opportunity four weeks subsequent for all parties to
16 submit reply argument to the argument submitted by the
17 other parties.

18 The only other matter that I would speak
19 to is the amount of time for oral argument. I can't
20 stand before you and say I have had 18 years in this
21 particular occupation, but I have had over 20 years of
22 being before hearings before and I have been involved
23 in these cases in the past and I have just most
24 recently dealt with, as you are aware, the Ontario
25 Waste Management Corporation hearing.

1 We had over 80 hearing days and
2 submissions, both written and oral, at the end of Phase
3 one and that took a week and basically there were two
4 parties. For all intents and purposes, the majority of
5 the discussion was between two parties, OWMC and what's
6 called in that case the tri-party group, and that took
7 I believe five days of hearing days in terms of the
8 oral presentations.

9 I would say to you, being familiar with
10 both cases, the level of complexity involved in that
11 case and this case, certainly the Phase one component
12 of that case, there is no comparison. This case is by
13 far much more complex, the issues are much more
14 demanding in terms of the scope and technical nature of
15 the issues and I think it will be much more challenging
16 for the Board to try and assimilate that amount of
17 information, particularly given it is going to span
18 over four years or more.

19 Given that, I think that it would be most
20 unwise to spend the amount of public money and time at
21 the very end of the case when the Board is -- I won't
22 say on its last legs, but it may well be that also. It
23 is also its last opportunity to have the matters before
24 clarified so you can make the most informed and best
25 decision possible, and I think to try and short circuit

1 that process in terms of the interest of half a day or
2 a day would be most unwise, and I think the Board
3 should seriously consider allowing at least two days
4 for that oral component to ensure that the Board has
5 the opportunity to explore with the parties fully the
6 positions they are bringing forward, that there is no
7 stone left unturned, although I doubt that will be the
8 case after four years.

9 Thank you, Madam Chair.

10 MADAM CHAIR: Thank you very much, Mr.
11 Hanna.

12 Mr. Hanna, I just make the suggestion, it
13 is obviously an obvious suggestion and that is with
14 respect to parties who may be preparing funding
15 applications, intervenor funding applications. I would
16 think that some of the material with respect to how
17 long parties might be involved in the later stages of
18 the hearing might be something useful to factor into
19 that.

20 I don't know what's going to happen to
21 the intervenor funding process, but I am sure you are
22 aware that this would give the funding panel some idea
23 of what will be involved.

24 MR. HANNA: We have attempted to factor
25 that into our thinking so far, but I think you are

1 probably aware that we are in the same position as the
2 Board in trying to look in a crystal ball and determine
3 what the long-term consequences might be in terms of
4 the final conclusion of the hearing, but I appreciate
5 that suggestion.

6 MR. FREIDIN: Madam Chair, I have to
7 leave. Could I just address you on a couple of
8 matters?

9 MADAM CHAIR: Go ahead, Mr. Freidin.

10 MR. FREIDIN: I was writing this out very
11 neatly for Mr. Cosman, but I think I can do it quickly.

12 You indicated a concern re the time in
13 cross-examination of reply evidence. I should just
14 advise you and your counsel I think will confirm that
15 in law the scope of a cross-examination of reply
16 evidence is limited in its scope. It's not a wide-open
17 full ranging cross-examination that you have heard on
18 some of the evidence which has been part of the
19 parties' case. So I think by way of legal principles
20 the cross-examination on reply evidence should be
21 somewhat more limited and focused than what you have
22 perhaps experienced to date.

23 Secondly, if the Board allows written
24 material to be filed by parties in response to the
25 written argument of others parties, which is Mr.

1 Cosman's suggestion, MNR would request that it file its
2 written reply argument two weeks after all that
3 happens.

4 Again, MNR is the proponent and there may
5 be comments back and forth between the parties which
6 have an effect on -- possible effect on the proponent
7 and I would like the opportunity to deal with that.

8 The scope of reply. Mr. Cosman was good
9 enough to cite you some law that he is always eager to
10 do. I would just suggest to you and leave with you at
11 the moment that this case is somewhat different than a
12 normal court case. Mr. Cosman's reproduction of the
13 law is accurate in the context of a court case.

14 As you know, there are issues which the
15 Board has indicated an interest in hearing about in
16 reply, developments in certain areas which it is has
17 already heard evidence about, be it monitoring, be it
18 FPP, whatever. Technically, technically that might not
19 be reply evidence, something you would have in reply
20 evidence, but in the context of a hearing like this you
21 are not bound by that technical rule and we intend to
22 bring you up to date in relation to some of those very
23 important matters and I will be surprised if the Board,
24 having regard to past comments, doesn't ask for some
25 update on some of those matters.

1 That's it. Again, I apologize and I can't
2 believe I am going to miss the submissions of my dear
3 friends from the Ministry of the Environment.

4 MADAM CHAIR: Thank you, Mr. Freidin.

5 Just one thing before you run off. You
6 mentioned in the second paragraph, and I don't know
7 why, but you mentioned as an example of issues that
8 would require oral explanation the current status of
9 new initiatives.

10 MR. FREIDIN: I'm sorry, is this what I
11 just said to you or...

12 MADAM CHAIR: This is the second
13 paragraph on page 1 under Reply Evidence.

14 MR. FREIDIN: Oh, yes. Some issues --
15 yes.

16 MADAM CHAIR: Current status of new
17 initiatives. What did you mean by that?

18 MR. FREIDIN: Well, it is hard to sort of
19 know exactly -- it may not be current status of new
20 initiatives, it may current status and I think what we
21 are talking about here is --

22 MADAM CHAIR: You are not talking about
23 the new initiatives that you were talking about a few
24 weeks ago because they will be old initiatives by that
25 time --

1 MR. FREIDIN: Well, they might be. I
2 will tell you that I didn't put those words in there
3 and I am not too sure what was intended, I will ask Ms.
4 Murphy.

5 What I am thinking about are in
6 particular issues which are of importance to you. You
7 heard what's going to be happening with the monitoring
8 program, what is going on. Unfortunately, things have
9 taken us a bit longer and it will be important to bring
10 you up to date and say: Here is where we are in
11 relation to some of those initiatives, whether they are
12 the ones we have talked about in the hearing.

13 I just think it would be unfortunate if
14 we had an opportunity to sort of bring up to date and
15 we could do that in some sort of efficient way, and if
16 we didn't do it you may end up making a decision based
17 on evidence which was two or three years ago. That's
18 all. I know you want an end.

19 MADAM CHAIR: Yes. I was going to say
20 that in advance of reply evidence and argument the
21 Board will be asking for an update of some considerable
22 amount of the database more than likely that is before
23 us that we feel is within MNR's ability to provide, and
24 we will be giving that to you well ahead of that point.

25 MR. FREIDIN: That's why we have asked

1 for you to indicate to us what is of interest to you so
2 we can in fact respond to it and organize it in written
3 or oral evidence as required.

4 Anymore questions?

5 MADAM CHAIR: One question that was
6 raised in Mr. Martel's mind. The state was made about
7 the current status of new initiatives and he was
8 wondering if the parties had received or have the new
9 initiatives that you discussed in your letter from Mr.
10 Wildman the last time we met to discuss procedures,
11 have those been delivered to the parties?

12 MR. FREIDIN: Nothing has happened in
13 that regard that I am aware of.

14 MADAM CHAIR: Thank you.

15 MR. FREIDIN: Thank you very much. I
16 apologize --

17 MR. COSMAN: As Mr. Freidin leaves, I
18 just wanted to deal with his comment on the legal
19 submission. He is quite right. This is --

20 MR. FREIDIN: If that's what your
21 submission is, thank you very much, Mr. Cosman.

22 MR. COSMAN: A right of reply is right to
23 adduce rebuttal evidence. There is nothing wrong with
24 that proposition. This Tribunal has said at the very
25 beginning, life doesn't stop as this hearing moves on

1 and there is additional evidence that this Board will
2 need to make its decision. That's just my comment
3 there to put it in the proper framework and this isn't
4 reply, that is an update on information that is
5 necessary. So the statement it is correct for the
6 proposition it stands for and as to what my rights are
7 in appearing before you.

8 Before Ms. Seaborn responds and has the
9 last word in respect to the proposal that was her
10 initiative at the outset, I understand that the
11 rationale for the December, the end of December date
12 was that the MOE would have filed it's written witness
13 statements.

14 The reason that I am asking that the
15 right to file reply evidence be after the evidence is
16 actually heard is there is always a tremendous
17 difference and variation between what one initially
18 reads and perceives in a witness statement and what
19 ultimately one hears from witnesses, and especially
20 after cross-examination. It is often after
21 cross-examination that a decision is made
22 with respect to right of reply.

23 MADAM CHAIR: Thank you.

24 Is there anything left for you to say
25 about your proposal, Ms. Seaborn?

1 MS. SEABORN: I think we started this
2 session by advising the Board that I thought that all
3 parties were in substantial agreement with my proposal.
4 I am not sure where we are left now, but I will try and
5 deal with this as quickly as possible.

6 The first thing I want to advise you of
7 is that Mr. Campbell has spoken to our office and
8 apparently Mr. Hunter has left a message that he is
9 agreement with our proposal. So I would like the Board
10 to be aware of that.

11 The first issue I will deal with is the
12 issue of reply evidence. One of the things the Board
13 will notice in our proposal is that the December 28th
14 filing date was a date that we calculated based on the
15 current schedule. What is really the important is the
16 period of two months from the date upon which OFAH
17 files its last witness statement in terms of when MOE
18 files its evidence, and at the moment MOE has to file
19 on October 28th. That assumes that OFAH files its last
20 witness statement on August 28th. If OFAH files it
21 early, files its last witness statement earlier than
22 that, then we would of course be obliged to file our
23 witness statement earlier as well.

24 So there is no magic in the December 28th
25 date. In our view it is easier in checking the matters

1 to tie it not to a particular date, but to an even flow
2 of the witness statements coming in.

3 The other reason for proposing the two
4 months from the date we file our witness statement for
5 reply evidence is to allow all the intervenors an
6 opportunity to review the reply evidence that can be
7 prepared up until that date and scope that evidence.

8 In our view, in order to shorten the
9 amount of days that will have to be spent in front of
10 the Board for reply evidence, the parties are going to
11 need some time to review that evidence and obtain
12 instructions from their clients.

13 After MOE's case, the only thing we have
14 left are some satellite hearings. It doesn't look like
15 at the moment those are going to take very long. We
16 have real concern waiting to receive the reply
17 evidence, as Mr. Cosman is proposing, when the whole
18 hearing is over, including the satellite hearings, and
19 then be in a position to commence with that evidence
20 the next week. We don't see how the issues could be
21 scoped.

22 I think that Mr. Cosman and Mr. Freidin's
23 concerns in terms of being able to deal with all the
24 parties' evidence and items that arise out of
25 cross-examination can be remedied just through the

1 right to file further reply evidence as those panels
2 put in their cases and as those panels are
3 cross-examined.

4 I think we see the reply evidence being
5 filed over a period of time, rather than waiting until
6 the whole case is concluded. We would like to go right
7 from the satellite hearings into reply evidence.

8 The other point that Mr. Campbell reminds
9 me of is that MNR has suggested that their reply
10 evidence could be as long as ten weeks. Now, if that
11 ten weeks takes into account the fact that we have
12 already scoped the reply evidence, then I have serious
13 concerns about receiving all of that material at the
14 end of the intervenor's case. I think there could be
15 a difficulty in terms of downtime in the hearing and
16 that's what we are concerned about in that regard.

17 I must say that I did speak with Mr.
18 Freidin, I am sorry he is gone, just before four p.m.
19 We had heard his concern about not having heard all of
20 the OFAH evidence before they prepared their reply.
21 We told Mr. Freidin that we would be agreeable to MNR
22 filing its reply evidence one week after the OFAH case
23 concludes as an alternative.

24 MR. COSMAN: Is that before the NOTOA
25 case?

1 MS. SEABORN: Yes. And then there would
2 be a second filing after the NOTOA case and MOE case
3 concludes. So that is an alternative that we could
4 live with. We still think that receiving the evidence
5 at the earliest possible date is important to the
6 orderly conduct of the remainder of the hearing.

7 The next issue I want to deal with is in
8 term of the final argument. It was very kind of Mr.
9 Cosman to refer to my proposal as being a creative
10 initiative. There are large hearings that have taken
11 place in this province and, in fact, at the federal
12 level as well. It is quite standard practice to have
13 both written and oral argument, but to have the written
14 argument organized in a particular fashion.

15 Mr. Freidin seemed to have real concerns
16 about some sort of grouping of issues and I just want
17 to quickly explain to the Board what we had in mind.
18 In our view, the parties should identify the issues
19 that they want to address at the end of the hearing
20 well in advance of preparing their final argument and
21 we are suggesting that that could be done as soon as
22 the reply evidence is filed; we could start identifying
23 the issues.

24 There are going to be legal issues that
25 the parties are going to want to address and then there

1 is going to be what we call substantive issues. In our
2 view, those two issues should be separated in terms of
3 the structure. We think that would be of assistance to
4 the Board.

5 We think the parties should come to an
6 agreement, if at all possible, on this grouping of
7 issues and that all parties should address these
8 general topics or issues in their final argument.

9 What has generally happened in the past
10 is that you will have a general topic like clearcut
11 size, you will have four issues, everyone will address
12 four issues. You can have under No. 5 other matters.
13 If other people want to address other matters relating
14 to the topic of clearcuts, they can address that in
15 your their argument.

16 We think a very organized, structured
17 written argument would be of assistance to the Board
18 because then you would have everyone's argument in
19 front of you, you would have all the sections, you
20 could flip to and you can see quickly what the parties'
21 positions are on the main topics.

22 We also think it would be important for
23 the Board to have input and to be happy with this
24 issues list, so that before we go off and start and
25 complete writing our final argument the Board is going

1 to have some sense from people that these issues will
2 be addressed. If someone doesn't take a particular
3 position on an issue, they can say they have no
4 submissions in one line. That's all they have to say.
5 We think it would be of assistance to the Board to have
6 a very organized written argument.

7 Just following from that, the other
8 reason why we think that -- we think that if the Board
9 accepts that issues should be agreed upon and there is
10 an organized written argument, then in our view the
11 time that needs to be allotted for oral argument does
12 not have to be very long.

13 The focus of the oral argument should be
14 an opportunity for the Board to ask the parties
15 questions and for the parties to highlight particular
16 matters, and that the opportunity to have oral argument
17 in front of Board should not be to stand up and have
18 your written argument in front of you and flip through
19 and say to the Board: Now, you must notice what we
20 said on page 14 and you must notice what we said on
21 page 114.

22 We don't think that should be the focus
23 of argument in a case this large. We think that the
24 written argument should be focused on the issues that
25 people should be thorough in their written argument and

1 that the Board should rely on that and then have the
2 parties come to them for questions of clarification.
3 That's why we have essentially allotted one day per
4 party.

5 We said three hours. There is no magic
6 in the three hours. We think if you set aside one day
7 for each of the major parties to come in front of the
8 Board and for the Board to ask questions and for that
9 party to outline their positions briefly, then that
10 should be adequate in a case of this length.

11 In terms of the suggestions that Mr.
12 Cosman and Mr. Freidin have made in relation to point 6
13 in particular of our submission, we have no objection
14 if other parties want to file a written argument in
15 reply. We don't see any difficulty with that and we
16 don't take any position to Mr. Freidin's request for
17 having in that regard two extra weeks to file his
18 argument in reply.

19 Subject to any questions you might have,
20 I think those are all the comments I have.

21 MADAM CHAIR: Thank you, Ms. Seaborn.

22 No, the Board doesn't have any questions
23 right now. We are going to take the submissions away
24 and look at them carefully.

25 Mr. Hanna?

1 MR. HANNA: Madam Chair, just so the
2 record is clear. I had indicated that I was in
3 agreement with submissions by Mr. Freidin. There is
4 one point I wish to clarify.

5 I do agree with the Ministry of the
6 Environment and Ms. Seaborn's submissions in terms of
7 grouping of issues. Mr. Freidin perhaps spoke somewhat
8 in a slightly different vein of how that should be
9 conducted. My client is in support of the organization
10 of the argument, along with some common set of issues
11 to assist the Board and the parties.

12 Thank you.

13 MADAM CHAIR: Thank you, Mr. Hanna.

14 MR. MARTEL: That should be able to be
15 worked out, should it not, quite readily, the order and
16 the fashion?

17 MR. HANNA: I think all the parties, Mr.
18 Martel, are in agreement with that.

19 MR. MARTEL: Except for Mr. Freidin.

20 MR. HANNA: Except for Mr. Freidin.

21 Certainly, as far as I know from the
22 discussions I had with the other parties there is a
23 common agreement with that.

24 MS. SEABORN: I think if I could just add
25 on that point, Mr. Martel. Another reason why we would

1 like to see these issues worked out early in advance by
2 the parties is that anyone can start working on their
3 final argument at any point in time, and the earlier we
4 can get agreement on what these issues are and get
5 input from the Board as to what they would like to see
6 people address, then people can start focusing on those
7 matters very soon after they put in their cases.

8 MADAM CHAIR: All right. Thank you very
9 much.

10 ---Whereupon the hearing was adjourned at 5:20 p.m, to
11 be reconvened Monday February 18, 1991 commencing at
12 10:30 p.m.
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